

2589
No. 12296

United States
Court of Appeals
For the Ninth Circuit.

E. R. GOOLD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review a Decision of the Tax Court
of the United States

OCT 28 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Tax Court of the United States

Docket No. 15072

E. R. GOOLD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Appearances:

For Petitioner:

Lafayette J. Smallpage

Frank C. Scott, C.P.A.

For Respondent:

Leonard A. Marcussen

R. C. Whitley

DOCKET ENTRIES

1947

June 30—Petition received and filed. Taxpayer notified. Fee paid.

July 1—Copy of petition served on General Counsel.

Aug. 6—Answer filed by General Counsel.

Aug. 6—Request for hearing in San Francisco, Calif., filed by General Counsel.

Aug. 12—Notice issued placing proceeding on San Francisco calendar. Service of answer and request made.

1948

Jan. 26—Hearing set March 22, 1948, San Francisco, California.

1948

Mar. 29—Hearing had before Judge Kern on merits.

and 30 All testifying witnesses excluded from Courtroom upon request of counsel for respondent. Record will be held open 30 days pending receipt of two partnership returns to be made a part of exhibit 10-J and 15-O; also to await balance sheets of E. R. Goold for 1944 thru 1946 and Goold, Downer & Zinck for 1942 thru 1946. Stipulation of facts with joint exhibits 1-A, 2-B and 3-C, motion to amend answer, amendment to answer and reply to amendment to answer filed at hearing. Copies served. Petitioner's brief due 6/1/48; respondent's brief due 7/1/48; petitioner's reply due 7/21/48.

Apr. 26—Transcript of hearing 3/29/48 filed.

Apr. 26—Transcript of hearing 3/30/48 filed.

May 4—Motion for leave to file exhibits 34-Z to 45-KK incl. filed. (Agreed). 5/5/48 Granted.

June 1—Brief filed by taxpayer. Copy served by taxpayer.

June 23—Motion for extension to Aug. 15, 1948 to file respondent's brief filed by General Counsel. 6/25/48 Granted.

Aug. 16—Motion for extension of time to Aug. 30, 1948 to file brief filed by General Counsel. 8/17/48 Granted.

1948

Sept. 3—Motion for leave to file the attached brief, brief lodged, filed by General Counsel.
9/7/48 Granted.

Sept. 30—Motion for leave to file the attached reply brief, brief lodged, filed by taxpayer.
10/1/48 Granted. 10/4/48 Copy served.

1949

Jan. 6—Memorandum findings of fact and opinion rendered, Judge Kern. Decision will be entered under Rule 50. Served 1/7/49.

Feb. 7—Motion for reconsideration of opinion and attached memorandum in support thereof filed by taxpayer.

Feb. 9—Motion of Feb. 7, 1949 denied.

Feb. 17—Computation filed by General Counsel.

Feb. 23—Hearing set Mar. 23, 1949 on respondent's computation.

Mar. 23—Hearing had before Judge Turner, on settlement. Referred to Judge Kern.

Mar. 24—Acceptance of computation under Rule 50 filed by taxpayer. Copy served.

Mar. 28—Decision entered, Judge Kern, Div. 16.

June 24—Bond in the sum of \$27,000.00 approved and ordered filed.

June 24—Petition for review by U. S. Court of Appeals for the Ninth Circuit with assignments of error filed by taxpayer.

June 24—Praeipie for record filed by taxpayer.

June 29—Proof of service of petition for review filed by General Counsel.

June 29—Proof of service of praecipe for record filed by General Counsel.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IRA :90-D :DMR/C :TS:PD/SF:WOW) dated June 5, 1947, and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual who resides at No. 1225 North Hunter Street, Stockton, California. The returns for the period here involved were filed with the collector for the first district of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on June 5, 1947.

3. The taxes in controversy are income and victory taxes for the calendar year 1943 and in the amount of \$18,849.65. The deficiency determined and asserted by the respondent Commissioner is \$18,632.28, and the petitioner claims that he is entitled to a refund of not less than \$217.37 in income and victory taxes overassessed on his return for the calendar year 1943, which amount was paid within three years before the execution (on February 26, 1947) of an agreement by both the respondent and the petitioner pursuant to section 276(b), Internal Revenue Code, to extend beyond the time prescribed in section 275, Internal Revenue Code, the time within which the respondent might assess the tax. See Exhibit B for computation of the refund claimed.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) In his determination of income tax net income and victory tax net income for the calendar year 1943 the respondent erroneously increased the petitioner's distributive share of ordinary income from the partnership, R. Goold and Son, \$27,046.49, by including therein the community property moiety thereof taxed and taxable in the 1943 return of the petitioner's wife Elizabeth.

(b) In his determination of income tax net income and victory tax net income for the calendar year 1943 the respondent erroneously failed and refused to reduce the petitioner's community property moiety of his distributive share of ordinary income from the above-named partnership \$355.94, i.e. from \$30,258.37 to \$29,902.43 (one-half of the corrected distributive share of \$59,804.86 as determined and computed in the said notice of deficiency at pages 2 and 3 of the statement attached thereto).

(c) In his determination of income tax net income for the calendar year 1943 the respondent erroneously added to the petitioner's taxable income \$131.31 to make his share of the net capital gain realized by the above-named partnership \$262.61 as if it were his separate property whereas the said gain of \$131.31 was properly included, taxed and taxable in the separate income tax return of the petitioner's said wife as her community property moiety of such net capital gain.

(d) In his determination of income tax net income and victory tax net income for the calendar year 1943 the respondent erroneously disallowed and failed and refused to allow a deduction of \$300 as the petitioner's community property moiety of travel and entertainment expenses paid and incurred by the petitioner individually in and about the partnership business of R. Goold and Son in the total amount of \$600 and properly claimed and deductible in the petitioner's and his said wife's returns.

(e) In his determination of victory tax net income for the calendar year 1943 the respondent erroneously failed and refused to allow as a deduction for accrued California personal income tax leviable and assessable upon the petitioner's distributive income of the partnership, R. Goold and Son, in the amount of \$2,215.64 (according to the respondent's computation thereof), or \$672.78 (according to the petitioner's computation thereof in Exhibit B), or any amount whatever.

(f) In his computation and determination of the petitioner's income tax for the calendar year 1943 the respondent erroneously failed and refused to allow the earned income credit of \$590.65 as claimed and deducted in the petitioner's return for that year, or the corrected and allowable earned income credit of \$618.04 as computed in Exhibit B hereunder, or the constructively allowable earned income credit of \$1,190.76 deductible on the basis of the taxable income determined by the respondent, or

any earned income credit whatever in excess of the minimum of \$300.

(g) In the alternative to specifications of error (a), (b) and (c) above, or any of them, the respondent, in determining the petitioner's income tax net income and victory tax net income for the calendar year 1943, erroneously failed and refused to eliminate, exclude and deduct from the petitioner's distributive share of the income of the partnership, R. Goold and Son, as the wife's moiety of community property income derived from and attributable to the petitioner's personal services in and about the business of the said partnership the sum of \$26,928.41, or any amount whatever in excess of \$2,500.

(h) In the alternative to specifications of error (a), (b) and (c) above, or any of them, the respondent, in determining and computing the petitioner's income tax for the calendar year 1943, erroneously failed, refused and neglected to apply and allow to the petitioner that part of the joint personal exemption, \$687.50, and credit for dependents, \$525.00, which had been claimed and deducted in the return of the petitioner's said wife, so as to result in the minimum aggregate tax liability for the two spouses when recomputed according to the respondent's concept or theory of the allocation of the taxable income.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) At all time material to this proceeding the

petitioner was married to and living with his wife Elizabeth. At all times since his marriage to the said wife the petitioner has been domiciled in and a resident of the State of California. At the end of the calendar year 1943 there was issue of the marriage of the petitioner and his said wife three daughters, Beverly Ann, Meredith Elizabeth and Joan Kathleen, all of whom were under the age of eighteen years and dependent upon the petitioner and his said wife, and a son, Everett R., Jr., who had been born on June 29, 1943, who was likewise dependent upon the petitioner and his said wife.

(b) The petitioner and his father, R. Goold, were equal partners in a general contracting business conducted under the style of R. Goold and Son. The petitioner acquired his one-half interest in the said partnership on January 2, 1943, by purchase on the credit of his community property estate from his father, R. Goold, the petitioner's purchase money obligation being in the form of a note for \$100,000, later corrected by endorsement to \$70,741, without interest and payable out of the petitioner's share of future earnings at the rate of twenty-five percent or more of the annual profits.

(c) Endorsements of credits on the said note under dates of December 25, 1943, 1944, and 1945, in the aggregate of \$24,000, by direction of the holder of the said note, R. Goold, the petitioner's father, as gifts were made with the intent and motive on the part of the said father to benefit the community property estate of the petitioner and his

wife Elizabeth and without any donative intent whatever toward the separate property estate of the petitioner or toward the petitioner in any manner except to benefit, increase and augment the said community property estate.

(d) The petitioner as a partner of the firm of R. Goold and Son paid and incurred expenses out of his own means and funds in and about the business of the firm and for the firm's benefit for the costs of travel, the entertainment of customers, suppliers and the like of the firm and for similar purposes in the sum of not less than \$600 for the year 1943, no part of which was reimbursed to him then or thereafter by the said firm. All of the expenses so incurred and paid were ordinary and necessary expenses of the petitioner in his business of general contracting as a partner of R. Goold and Son and in connection with his earning of his share of the partnership income.

(e) The petitioner and his said wife were, as residents of California, subject for the calendar year 1943, and for all other periods material to this proceeding, to taxation of his and their income by the State of California under the provisions of the California Personal Income Tax Act (Stats. 1935, p. 1090) as amended (Stats. 1937, p. 1831; Stats. 1939, p. 2528; Stats. 1941, pp. 1226, 1275; and Stats. 1943, pp. 1040, 1467 and 1568) and they did duly file under the provisions of the said Act on official forms provided by the Franchise Tax Commissioner of the said State separate income tax returns for

the said calendar year in which the "net income" of each spouse was shown and returned in the amount of \$30,261.59, and the income tax was computed, paid and assessed on each separate return in the amount of \$690.58.

(f) The petitioner's total community property income from wages and salaries payable to and received by the petitioner during the calendar year 1943 was \$690 and the net community property moiety thereof taxable on his separate income tax return, after deduction of California unemployment tax levied thereon, was \$341.55. The amount of the petitioner's distributive share of the net profits of the partnership, R. Goold and Son, for the calendar year 1943 derived from and attributable to the petitioner's personal services in and about the business of the partnership was not less than \$53,256.82 and a "reasonable allowance as compensation for personal services actually rendered" by the petitioner during the said calendar year to "be considered as earned income" for the purposes of sections 25(a)(3) and 25(a)(4), Internal Revenue Code, as in force and effect for the said calendar year, was not less than \$11,677.74.

Wherefore the petitioner prays that this honorable Court may hear the proceeding and determine that he is not liable for any deficiency in income and victory taxes and, further, that he is entitled to a refund of an overassessment and overpayment of income and victory taxes in the amount of \$217.34, and that taxes of such amount were paid

within three years before the execution of an agreement by both the respondent and the petitioner pursuant to section 276(b), Internal Revenue Code, to extend beyond the time prescribed in section 275, Internal Revenue Code, the time within which the respondent might assess the tax, and he further prays for such other relief as the Court may deem proper according to the evidence and the record in this proceeding.

/s/ LAFAYETTE J. SMALLPAGE.

/s/ FRANK C. SCOTT, C.P.A.,

Counsel for Petitioner.

State of California,
County of San Joaquin—ss.

E. R. Goold, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ E. R. GOOLD.

Subscribed and sworn to before me this 16th day of June, 1947.

[Seal]

HAZEL SMIKLE,

Notary Public in and for the said State and County.

EXHIBIT A

[Letterhead]

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Office of

June 5, 1947

Internal Revenue Agent in Charge

San Francisco Division

IRS:90-D:DMR:(C:TS:PD:SF:WOW)

Mr. E. R. Goold

1832 Lomita Avenue

Stockton, California

Dear Mr. Goold:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943 discloses a deficiency of \$18,632.28 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, San Francisco 5, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.;

Commissioner,

By /s/ F. M. HARLESS,

Internal Revenue Agent
in Charge.

Enclosures: Statement, Form of waiver, Form 1276.

Statement

San Francisco

IRA:90-D:DMR:(D:TS:PD:SF:WOW)

Mr. E. R. Goold
1832 Lomita Avenue
Stockton, California

Tax Liability for the Taxable Year Ended December 31, 1943.	
Income and Victory Tax.....	Deficiency \$18,632.28

In making this determination of your income and victory tax liability, careful consideration has been given to your protest executed September 20, 1945 and to the statements made at the conference held

on February 11, 1946, February 11, 1947 and March 28, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. Lafayette J. Smallpage, Savings and Loan Bank Building, Stockton, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

STATEMENT FOR YEAR 1942

No change is made in income as reported on your joint return.
Tentative income tax liability reported..... \$47.42

Statement

ADJUSTMENTS TO NET INCOME

Year: 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$29,523.48	\$29,660.22
Unallowable deductions and additional income:		
(a) Partnership income	\$27,046.49	\$27,046.49
(b) Capital Gain	131.31	0.00
(c) Other deductions	988.45	988.45
	<hr/>	<hr/>
Total	\$28,166.25	28,034.94
Nontaxable income and additional deductions:		
(d) Taxes	\$57,689.73	\$57,695.16
	<hr/>	<hr/>
Net income as adjusted.....	2,217.08	0.00
	<hr/>	<hr/>
	\$55,472.65	\$57,695.16

EXPLANATION OF ADJUSTMENTS

(a) Partnership income from R. Goold and Son, Stockton, California, is increased by \$27,046.49 as shown below:

Total ordinary income reported on partnership return	\$121,033.49
Increase:	
(1) C. E. Kennedy.....	1,220.80
Total	\$122,254.29
Decrease:	
(2) C. L. Wold, P. Midbust and Anderson and Ringrose	2,644.56
Partnership income as corrected.....	\$119,609.73
Fifty percent distributive share.....	59,804.86
(3) Your separate and community share (\$59,804.86—\$2,500.00)	57,304.86
Amount reported on return.....	30,258.37
Adjustment—increase	\$ 27,046.49

(1) Income from partnership of C. E. Kennedy is increased by \$1,220.80 as follows:

(A) Cost of goods sold overstated.....	\$ 3,139.37
(B) Salaries and wages overstated.....	523.04

 Total increase

\$ 3,662.41

 Distributive share—33 $\frac{1}{3}$ %

\$ 1,220.80

 (A) It is disclosed that the total cost of materials purchased was \$14,924.83 instead of \$18,064.20 as claimed, a difference of \$3,319.37.

 (B) On the basis of records submitted, deduction for salaries and wages is reduced from \$22,502.35 to \$21,979.31, a decrease of \$523.04.

(2) Income from C. L. Wold, P. Midbust and Anderson and Ringrose, a partnership, is decreased by \$2,644.56 as follows:

Decrease:

(A) Net profit overstated..... \$ 4,377.89

Increase:

(B) Unreported travel and office expense allowance

1,733.33

Net decrease

\$ 2,644.56

(A) Total profit of \$535,836.45 on construction work completed during the years 1942 and 1943 is reallocated between the two years on the basis of contracts completed and accepted in 1942. The amount of \$39,400.94 included in profits for 1943 is transferred to the taxable year 1942 as previously agreed to by you. Your one-ninth distributive share of profit overstated in 1943 is \$4,377.89.

(B) Unreported reimbursement of \$2,233.33 received for travel expense and office expense is considered as additional income from the partnership. However, a deduction of \$500.00 is allowed from the above amount for traveling expenses made to Marysville in connection with construction work. Accordingly, income is increased by the net difference of \$1,733.33.

(3) On or about January 2, 1943, you and your father entered into an agreement of co-partnership. At the same time your father transferred to you a one-half interest in Eddy Electrical and Mechanical Company, theretofore operated as a sole proprietorship, and one-half of his interest in several joint ventures, engaged in construction work, for your note of \$100,000.00 without interest. Payments on said note were to be solely out of future profits and in a sum equal to twenty-five (25%) percent or more of the annual profits which shall be made to and received by you out of the operation of said business.

By an endorsement dated December 31, 1943, the note was credited with \$50,000.00 described as "Credit by Error made in Computation of value of

EXPLANATION OF ADJUSTMENTS

(a) Partnership income from R. Goold and Son, Stockton, California, is increased by \$27,046.49 as shown below:

Total ordinary income reported on partnership return	\$121,033.49
Increase:	
(1) C. E. Kennedy.....	1,220.80
Total	\$122,254.29
Decrease:	
(2) C. L. Wold, P. Midbust and Anderson and Ringrose	2,644.56
Partnership income as corrected.....	\$119,609.73
Fifty percent distributive share.....	59,804.86
(3) Your separate and community share (\$59,804.86—\$2,500.00)	57,304.86
Amount reported on return.....	30,258.37
Adjustment—increase	\$ 27,046.49

(1) Income from partnership of C. E. Kennedy is increased by \$1,220.80 as follows:	
(A) Cost of goods sold overstated.....	\$ 3,139.37
(B) Salaries and wages overstated.....	523.04

Total increase	\$ 3,662.41
Distributive share—33 $\frac{1}{3}$ %	\$ 1,220.80

(A) It is disclosed that the total cost of materials purchased was \$14,924.83 instead of \$18,064.20 as claimed, a difference of \$3,319.37.

(B) On the basis of records submitted, deduction for salaries and wages is reduced from \$22,502.35 to \$21,979.31, a decrease of \$523.04.

(2) Income from C. L. Wold, P. Midbust and Anderson and Ringrose, a partnership, is decreased by \$2,644.56 as follows:

Decrease:	
(A) Net profit overstated.....	\$ 4,377.89

Increase:	
(B) Unreported travel and office expense allowance	1,733.33

Net decrease	\$ 2,644.56
--------------------	-------------

(A) Total profit of \$535,836.45 on construction work completed during the years 1942 and 1943 is reallocated between the two years on the basis of contracts completed and accepted in 1942. The amount of \$39,400.94 included in profits for 1943 is transferred to the taxable year 1942 as previously agreed to by you. Your one-ninth distributive share of profit overstated in 1943 is \$4,377.89.

(B) Unreported reimbursement of \$2,233.33 received for travel expense and office expense is considered as additional income from the partnership. However, a deduction of \$500.00 is allowed from the above amount for traveling expenses made to Marysville in connection with construction work. Accordingly, income is increased by the net difference of \$1,733.33.

(3) On or about January 2, 1943, you and your father entered into an agreement of co-partnership. At the same time your father transferred to you a one-half interest in Eddy Electrical and Mechanical Company, theretofore operated as a sole proprietorship, and one-half of his interest in several joint ventures, engaged in construction work, for your note of \$100,000.00 without interest. Payments on said note were to be solely out of future profits and in a sum equal to twenty-five (25%) percent or more of the annual profits which shall be made to and received by you out of the operation of said business.

By an endorsement dated December 31, 1943, the note was credited with \$50,000.00 described as "Credit by Error made in Computation of value of

Interest Sold.” By endorsement dated January 17, 1947, the credit was changed to \$29,259.00 in place of the above-mentioned \$50,000.00. The note also bears endorsements dated December 25, 1943, December 25, 1944 and December 25, 1945, described as gifts and the sums of the gifts aggregate \$24,000.00. An endorsement appears on said note dated January 25, 1947, described, “Earnings for 1945 \$7,107.42.”

The last-mentioned amount represents a payment made by you to your father out of your share of the partnership profits of 1945. On or about March 26, 1947, you delivered a bank check to your father in the amount of \$3,040.04 purporting to represent payment out of 1946 profits. No payment has been made by you respecting the annual profits of the partnership for the years 1943 and 1944.

Your share of the profits amounted to approximately \$60,000.00 in 1943 and \$7,900.00 in 1944. You contend that your share of the income earned by the partnership is community income in its entirety, divisible equally between yourself and your wife. It is held that the circumstances herein, including the endorsements aggregating \$24,000.00 described as gifts and the omission of payments out of profits of the years 1943 and 1944 signify that your father did not intend to enforce payment of the note with the consequence that the transaction whereby you acquired a one-half interest from him is in the nature of a gift and your share of the income of the partnership for 1943 is taxable to you as your separate income except \$5,000.00 which is regarded as

the fair value of your services and constitutes community income.

(b) You and your wife each reported one-half of net capital gain of \$262.61 from the partnership of R. Goold and Son. It is held that the above-mentioned gain is taxable to you in full as your separate property, and accordingly, your income is increased by \$131.31.

(c) Other deductions claimed in the amount of \$988.45 are disallowed as follows:

(1) Entertainment expenses	\$300.00
(2) State income taxes	688.45

Total disallowed \$988.45

(1) Entertainment expenses deducted in the amount of \$300.00 in connection with partnership business are disallowed for the reasons that evidence has not been submitted establishing the expenditures as ordinary and necessary business expenses and amounts of such expenditures have not been substantiated.

(2) Deduction of \$688.45 for California state income tax attributable to business income is eliminated since accrued state income tax on your total income is allowed under item (d) below.

(d) Deduction for accrued state income tax is increased by \$2,217.08 as computed below:

Total income subject to state income tax.....	\$57,953.47	
(including net capital gain of \$525.22 at 100%)		
Less:		
Personal exemption	\$3,500.00	
Dependents	800.00	4,300.00
		<hr/>
Balance subject to tax.....		\$53,653.47

Tax on \$30,000.00	\$ 800.00
Tax on \$23,653.47	1,419.21

Total state income tax accrued.....	\$ 2,219.21
Amount deducted on return.....	2.13

Adjustment—increase	\$ 2,217.08
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(e) Earned income credit of \$300.00 is allowed as follows:

Partnership earned net income	\$ 5,000.00
Salaries	683.10

Total earned net income.....	\$ 5,683.10
------------------------------	-------------

Your one-half share.....	\$ 2,841.55
--------------------------	-------------

Earned income credit allowed (minimum).....	\$ 300.00
---	-----------

COMPUTATION OF ALTERNATIVE TAX

Year: 1943

Net income	\$55,472.65
------------------	-------------

Less:

Net long-term capital gain.....	262.61
---------------------------------	--------

Ordinary net income.....	\$55,210.04
--------------------------	-------------

Less:

Personal exemption	\$512.50
Credit for dependents.....	700.00
	1,212.50

Surtax net income.....	\$53,997.54
------------------------	-------------

Less:

(e) Earned income credit.....	300.00
-------------------------------	--------

Income subject to normal tax.....	\$53,697.54
-----------------------------------	-------------

Normal tax at 6% on \$53,697.54.....	\$ 3,221.85
--------------------------------------	-------------

Surtax on \$53,997.54.....	25,878.38
----------------------------	-----------

Partial tax	\$29,100.23
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Add:

50% of excess of net long-term capital gain over net short-term capital loss.....	\$ 131.31
--	-----------

Alternative tax	\$29,231.54
-----------------------	-------------

COMPUTATION OF TAX

Year: 1943

Income tax net income.....		\$55,472.65
Less:		
Personal exemption	\$ 512.50	
Credit for dependents.....	700.00	1,212.50
		<hr/>
Surtax net income.....		\$54,260.15
Less:		
Earned income credit.....		300.00
		<hr/>
Balance subject to normal tax.....		\$53,960.15
		<hr/>
Normal tax at 6% on \$53,960.15.....	\$ 3,237.61	
Surtax on \$54,260.15.....	26,051.70	
		<hr/>
Total income tax.....		\$29,289.31
		<hr/>
Total alternative tax		\$29,231.54
Total income tax.....		\$29,231.54
Victory tax net income.....	\$57,695.16	
Less:		
Specific exemption	624.00	
		<hr/>
Income subject to victory tax.....	\$57,071.16	
		<hr/>
Victory tax before credit		
(5% of \$57,071.16)	\$ 2,853.56	
Less:		
Victory tax credit.....	700.00	
		<hr/>
Net victory tax.....		2,153.56
		<hr/>
Income and victory tax for 1943.....		\$31,385.10
		<hr/>
Income tax for 1942 (1/2 of \$47.42).....	\$ 23.71	
		<hr/>
Amount of 1942 or 1943 tax, whichever is larger.....		\$31,385.10
Forgiveness feature:		
Amount of 1942 or 1943 tax whichever		
is smaller	\$ 23.71	
Amount forgiven	23.71	
		<hr/>
Amount unforgiven		0.00
		<hr/>
Correct income and victory tax liability.....		\$31,385.10

Income and victory tax disclosed by return; page 4—line 20 (Original, Account No. 901274, June 1944 List—First California District).....	\$12,752.82
Deficiency of income and victory tax.....	\$18,632.28

EXHIBIT B OF PETITION

Statement of Overpayment Claimed for Refund

I. Net Income

	Income Tax Net Income	Victory Tax Net Income
Income		
1. Salaries and wages.....	\$ 341.55	\$ 341.55
2. Dividends	17.50	17.50
4(b) Interest on Government obligations	31.25	31.25
6(a) Capital gain	131.30	
9. Income from partnership.....	29,902.43	29,902.43
10. Total income	\$30,424.03	\$30,292.73
Deductions		
11. Contributions	\$ 52.50	
12. Interest	149.75	
13. Taxes	736.44	\$ 670.68
16. Other deductions, business expense	300.00	300.00
17. Total deductions	\$ 1,238.69	\$ 970.68
18. Income tax net income.....	\$29,185.34	
19. Victory tax net income.....		\$29,322.05

Explanation of Items

Items 1, 2, 4(b) and 6(a). Per petitioner's income tax return unchanged.	
Item 9. Corrected distributive share of ordinary income per Exhibit A above (pages 2 and 3 of Statement	\$59,804.86
Community property moiety taxable to petitioner	29,902.43
Items 11 and 12. Per petitioner's income tax return unchanged.	
Item 13. Personal taxes per petitioner's income tax return	\$ 63.66
California income tax per Exhibit B-1 below.....	672.78
Total for income tax net income.....	\$ 736.44
California income on business per allocation in Exhibit B-1 below, \$670.68 for victory tax net income.	
Item 16. Travel and entertainment expense as claimed in petitioner's income tax return.	

II. Computation of Tax and Overpayment Claimed

1. Income net income per item 18, Section I.....	\$29,185.34	
2. Less capital gain.....	131.30	
		<hr/>
3. Balance, ordinary net income.....	\$29,054.04	
4. Less: Personal exemption	\$512.50	
Credit for dependents.....	700.00	1,212.50
		<hr/>
6. Balance, surtax net income.....	\$27,841.54	
7. Less earned income credit as computed below.....	618.04	
		<hr/>
8. Balance subject to normal tax.....	\$27,223.50	
9. Normal tax at 6 percent.....	\$ 1,633.41	
10. Surtax on \$27,841.54.....	10,032.85	
11. Tax on capital gain, \$131.30 at 50 percent.....	65.65	
		<hr/>
12. Total income tax.....	\$11,731.91	
13. Victory tax as computed below.....	803.54	
		<hr/>
14. Total tax on 1943 income.....	\$12,536.06	
15. Tax on 1942 income.....	0.00	
		<hr/>
16. Total tax liability.....	\$12,535.45	
17. Income and Victory Tax disclosed by return (account No. 901274, June 1944 list, First Dist. of Calif.) and paid in full.....	12,752.82	
		<hr/>
18. Difference, overpayment claimed for refund.....	\$ 217.37	

III. Earned Income Credit

1. Ordinary net income partnership per item 9, Section I.....	\$29,902.43	
2. Business capital gain, item 6(a), Sec. I, \$131.30 \times 2	262.60	
		<hr/>
3. Total	\$30,165.03	
4. Less: travel and entertainment expense, item 16, Section I.....	\$300.00	
5. Accrued California income tax on business per Exhibit B-1.....	670.68	970.68
		<hr/>
6. Difference net profit from business.....	\$29,194.35	
7. Amount attributable to personal services.....	\$26,628.41	
8. Limitation on amount to be considered as earned income 20 per cent of \$29,194.35.....	\$ 5,838.87	
9. Salaries and wages per item 1, Section I.....	341.55	
		<hr/>
10. Total earned income.....	\$ 6,180.42	
11. Earned income credit at 10 percent.....	\$ 618.04	

IV. Victory Tax Computation

1. Victory tax net income per item 19, Section I.....	\$29,322.05
2. Less specific exemption.....	624.00
3. Balance subject to tax.....	\$28,698.05
4. Victory tax at 5 percent.....	\$ 1,434.90
5. Credit at 44 percent.....	631.36
6. Difference, net victory tax.....	\$ 803.54

Exhibit B-1: Computation of Corrected California Income Tax for 1943, and Allocation

Income		
1. Salaries and wages.....	\$	341.55
2. Dividends		17.50
9. Partnership R. Goold & Son.....		30,112.51
12. Total income.....		\$30,471.56
Deductions		
13. Contributions	\$	52.50
14. Interest		149.75
15. Taxes		63.66
16. Other deductions, business expense.....		300.00
20. Total deductions		565.91
21. Net income		\$29,905.65
23. Less: personal exemption	\$1,050.00	
credit for dependents.....	1,400.00	2,450.00
25. Balance subject to tax.....		\$27,455.65
Tax on \$25,000.....	\$	550.00
Tax on balance, \$2,455.65 @ 5%.....		122.78
Total tax	\$	672.78
Tax on business income (\$30,112.51—\$300)		
29,812.51/29,905.65 of \$672.78		670.68
Balance, tax on non-business income.....	\$	2.10

[Endorsed]: Filed T. C. U. S., June 30, 1947.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney,

Charles Oliphant, Acting Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes involved are income and victory taxes for the calendar year 1943, that the deficiency determined and asserted by the respondent is \$18,632.28, and that the petitioner claims that he is entitled to a refund of not less than \$217.37; denies the remaining allegations contained in paragraph 3 of the petition.

4 (a) to (h), inclusive. Denies the allegations of error contained in subparagraphs (a) to (h), inclusive, of paragraph 4 of the petition.

5 (a). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b). Admits that petitioner and his father, R. Goold, were equal partners in a general contracting business conducted under the style of R. Goold and Son and that petitioner acquired his one-half interest in the said partnership on January 2, 1943, from his father, R. Goold, to whom petitioner gave a note for \$100,000, later changed by endorsement to \$70,741, without interest and payable out of the petitioner's share of future earnings at the rate of twenty-five per cent or more of the annual profits; denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c). Admits that endorsements of credits on the said note under dates of December 25, 1943, 1944, and 1945, in the aggregate of \$24,000, by direction of the holder of the said note, R. Goold, the petitioner's father, were made as gifts; denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) and (e). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs (d) and (e) of paragraph 5 of the petition.

(f). Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Acting Chief Counsel, Bureau
of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
T. M. MATHER,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: Filed T.C.U.S. Aug. 6, 1947.

[Title of Tax Court and Cause.]

AMENDMENT TO ANSWER

Leave of the Court having first been obtained,

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue and amends, his answer to the petition filed by the above-named petitioner by adding thereto the following allegations:

7 (a). Petitioner filed his 1943 Federal income and victory tax return on the accrual and calendar year basis and claimed a deduction for personal income tax payable to the State of California for said year in the amount of \$690.58 from income tax net income and \$688.45 from victory tax net income.

(b). Respondent in his notice of deficiency erroneously allowed a deduction for said personal income tax payable to the State of California in the amount of \$2,219.21.

(c). On or about June 13, 1944, petitioner duly filed with the Franchise Tax Commissioner of the State of California a personal income tax return as required by the California law showing a liability for California personal income tax for the calendar year 1943 in the amount of \$690.58, which amount petitioner paid.

(d). On or about October 24, 1947, the office of the Franchise Tax Commissioner sent petitioner a formal Notice of Additional Personal Income Tax

Proposed to Be Assessed, showing a proposed additional assessment in the amount of \$1,484.51.

(e). Petitioner duly filed with the Franchise Tax Commissioner a protest against the proposed additional assessment contesting his liability for the payment thereof. Petitioner has not paid the proposed additional assessment and continues to contest his liability for the same.

Wherefore, respondent prays that the Court redetermine the deficiency herein to be the amount determined by the Commissioner, viz., \$18,632.28, plus an increased deficiency in the amount of \$1,100.61, claim for which is hereby made pursuant to the provisions of section 272(e) of the Internal Revenue Code.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
T. M. MATHER,
Special Attorneys,
LEONARD A. MARCUSSEN,
Bureau of Internal Revenue.

[Endorsed]: Filed T.C.U.S. Mar. 29, 1948.

[Title of Tax Court and Cause.]

REPLY TO AMENDMENT TO ANSWER

Now Comes the petitioner, E. R. Goold, by his counsel as undersigned and for reply to the amendment to answer filed in this proceeding on behalf of the respondent Commissioner pleads as follows:

7(a). Admits the allegations contained in paragraph 7(a) of the amendment to answer.

7(b). Denies the allegation contained in paragraph 7(b) of the amendment to answer.

7(c) and (d). Admits the allegations contained in paragraphs 7(c) and 7(d) of the amendment to answer.

7(e). Admits that the petitioner duly filed with the said Franchise Tax Commissioner a protest against the proposed assessment described in paragraph 7(d) of the amendment to answer but denies the remaining allegations in the said paragraph 7(e) except to the extent and in the manner in which they are confirmed by the true copy of the said protest attached to and made a part of this reply and marked Exhibit A.

8. The petitioner denies generally and specifically each and every other allegation or implication in the said amendment to answer against the interest of the petitioner not hereinbefore qualified or denied.

Wherefore the petitioner prays that this honorable Court may hear the proceeding and determine that he is not liable for any deficiency in income

and victory taxes and, further, that he is entitled to a refund of an overassessment of income and victory taxes in the amount of \$217.34 as prayed in his petition, and for such other relief as the Court may deem proper according to the evidence and the record in this proceeding.

/s/ LAFAYETTE J. SMALLPAGE,
/s/ FRANK C. SCOTT, C.P.A.,
Counsel for the Petitioner.

EXHIBIT A

Of Reply to Amendment to Answer

From the office of Frank C. Scott, Certified Public Accountant, Stockton, California.

Nov. 5, 1947.

Subject: Protest of E. R. Goold against proposed additional personal income tax for 1943.

Hon. Charles J. McColgan
Franchise Tax Commissioner
No. 1020 N Street
Sacramento 14, California

Dear Mr. McColgan:

This is to protest the additional personal income tax proposed by your Form 830 notice No. 87023, dated October 24, 1947, to be assessed on the Form 540 income tax return Serial No. 2,617,067 of E. R. Goold, who resides at No. 1225 North Hunter Street, Stockton, California, for the calendar year 1943. The entire amount of the proposed tax, \$1,484.51, is in dispute, it being contended that the protest-

ant is entitled to a refund of \$17.80 in personal income tax overpaid according to his Form 543 claim for refund filed contemporaneously herewith.

The adjustments productive of the proposed tax to which exception is taken are as follows:

(a) The transfer to the protestant's return of \$27,256.58 in income from the partnership of R. Goold & Son from the return of his wife, Elizabeth, as not being community property income properly on his wife's return; and

(b) The disallowance of \$300 deducted as entertainment expense in connection with the protestant's partnership business.

The grounds upon which the protestant relies as to the exceptions taken are as follows:

A: Community Property Income from Partnership.

The determination that only \$5,000 of the protestant's corrected share of income from the partnership, R. Goold & Son, was community property income is based upon erroneous facts and premises and erroneous conclusions as to the pertinent laws of California pertaining to community property and gifts to community property estates. The correct facts and the only ones pertinent to the matter here at issue are as follows:

At all times material to this proceeding the petitioner was married to and living with his wife Elizabeth. At all times since his marriage to the said wife the petitioner has been domiciled in and a resident of the State of California.

The petitioner and his father, R. Goold, were equal partners in a general contracting business conducted under the style of R. Goold and Son. The petitioner acquired his one-half interest in the said partnership on January 2, 1943, by purchase on the credit of his community property estate from his father, R. Goold, the petitioner's purchase money obligation being in the form of a note for \$100,000, later corrected by endorsement to \$70,741, without interest and payable out of the petitioner's share of future earnings at the rate of twenty-five per cent or more of the annual profits.

Endorsements of credits on the said note under dates of December 25, 1943, 1944, and 1945, in the aggregate of \$24,000, by direction of the holder of the said note, R. Goold, the petitioner's father, as gifts were made with the intent and motive on the part of the said father to benefit the community property estate of the petitioner and his wife, Elizabeth, and without any donative intent whatever toward the separate property estate of the petitioner or toward the petitioner in any manner except to benefit, increase and augment the said community property estate.

Assuming that the foregoing statement of facts is true, it is apparent that determination of a limited community property interest in the partnership assets and the partnership profits is without foundation. The facts are susceptible of proof and will be proven by proper and competent evidence in the pending proceeding before The Tax Court of the

United States under its docket number 15072 in which an identical determination for Federal income tax purposes is at issue.

It is suggested that the question here be settled on the basis of The Tax Court's findings in the cited proceeding.

B: Disallowance of Entertainment Expense.

This issue is entirely a question of fact, and an identical disallowance is at issue in the above cited proceeding pending before The Tax Court. In that proceeding it is intended to prove that the protestant as a partner of the firm of R. Goold and Son paid and incurred expenses out of his own means and funds in and about the business of the firm and for the firm's benefit for the costs of travel, the entertainment of customers, suppliers and the like of the firm and for similar purposes in the sum of not less than \$600 for the year 1943, no part of which was reimbursed to him then or thereafter by the said firm; and, further, that all of the expenses so incurred and paid were ordinary and necessary expenses of the petitioner in his business of general contracting as a partner of R. Goold and Son and in connection with his earning of his share of the partnership income.

It is suggested that the question here at issue also be settled on the basis of The Tax Court's findings in the cited proceeding.

Conclusion.

In view of the suggestions above that the findings of The Tax Court of the United States on

issues identical with those raised in the exceptions stated above, but with respect to the protestant's Federal income tax liability, be accepted as basis for settlement of this protest, it is not desired that an oral hearing be granted for the consideration of this protest, but if you should decide not to follow these suggestions the protestant would, of course, desire to have an oral hearing at which he might present evidence in support of the facts stated above as grounds for his exceptions.

Respectfully,

/s/ E. R. GOOLD.

A true copy:

/s/ FRANK C. SCOTT, C.P.A.

Post Office Box No. 1904,

Stockton 100, California.

[Endorsed]: Filed T.C.U.S. Mar. 29, 1948.

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT AND
OPINION

This proceeding involves a deficiency in income and victory tax for the calendar year 1943 in the amount of \$18,632.28, set forth in the deficiency notice, plus an increase of \$1,100.61 claimed by respondent in an amendment to his answer, the total deficiency being in the sum of \$19,732.89. Petitioner claims an overpayment of \$217.37.

The principal issue is whether petitioner's share in the net income of the partnership of R. Goold & Son was his community or separate income. This, in turn, depends upon whether the interest in the partnership was acquired by petitioner from his father, the other partner, by purchase, as petitioner contends, or by gift, as respondent urges.

If the principal issue is decided in favor of respondent, two additional questions arise:

1. The amount of petitioner's distributive share of the partnership income attributable to his personal services, respondent allowing \$5,000 therefor and considering the remainder as petitioner's separate income;

2. The propriety of respondent's action in refusing to change the amounts of personal exemption and of credit for dependents from that claimed by petitioner on his return, after the reallocation of the income.

Four subordinate issues are also presented:

1. The amount, if any, of deductible traveling and entertainment expenses claimed by petitioner on his return in the amount of \$300;

2. The proper amount allowable as a deduction for personal income tax payable to the State of California, in computing Federal income tax liability;

3. The propriety of respondent's action in disallowing entirely for purposes of victory tax computation a deduction for the California personal income tax;

4. The amount of earned income credit to which petitioner is entitled.

Some of the facts have been stipulated.

FINDINGS OF FACT

The stipulated facts are hereby found accordingly and are incorporated herein by reference.

At all times material to this proceeding petitioner was a resident of Stockton, California, was married, and was the father of four minor children. One was born on June 29, 1943; the others were under eighteen years of age in 1943.

His tax return for the year involved, prepared on a calendar year-accrual basis, was filed with the collector for the first district of California. He reported his income and deductions on the community property method.

On January 2, 1943, petitioner and his father, R. Goold, entered into a partnership under the firm name of R. Goold & Son for the purpose of operating a business which petitioner's father had theretofore conducted as a sole proprietorship. On that date the father executed a bill of sale, whereby it was sought to transfer to petitioner an undivided one-half interest in all of the former's business assets described in the document, as follows:

- A. Eddy Electric and Mechanical Company. Assets valued at.....\$32,560.83
- B. An undivided one-half interest in the R. Goold and A. E. Downer joint venture as shown upon the book of accounts 51,496.04

C.	An undivided one-half interest in the R. Goold and F. R. Zinck joint venture as shown upon the book of accounts	\$10,115.09
D.	An undivided one-half interest in the R. Goold and A. R. Liner joint venture as shown upon the book of accounts	2,500.00
E.	An undivided one-half interest in the R. Goold and C. L. Wold joint venture as shown upon the book of accounts	25,000.00
F.	An undivided one-half interest in the "Marysville" Contract as shown upon the book of accounts	40,000.00
Total		\$161,671.96

The property so described was owned prior to the transfer by petitioner's father and mother as their community property. In addition, they owned other community property of a value in excess of \$83,000. They were the parents of another child, a daughter, who was two years older than petitioner.

The recited consideration for the transfer of the one-half interest was the execution and delivery by petitioner of a non-interest bearing note in the amount of \$100,000, payable at the rate of "twenty-five (25%) per cent or more of the annual profits which shall be made to and received by me out of the operation of said business."

At the time of this transaction with his father, petitioner owned a small home, an automobile, and four shares of stock of the Union Oil Co.

Item A of the bill of sale represented the value of the assets of the Eddy Co., which was engaged in the business of the installation of wiring systems and the sale of electrical materials, supplies, and appliances. Items B to F, inclusive, consisted of the known and estimated share of the profits of petitioner's father in certain joint ventures for the performance of various Government contracts in the general area of Stockton, California. Petitioner's father received his share of the profits in each of the joint ventures primarily for undertaking the responsibility of financing them in whole or in part. Such financing as was necessary had been arranged and completed by petitioner's father prior to January, 1943. The accounting and handling of money for the joint ventures was done in the office of petitioner's father in order to safeguard his interests in connection with their financing.

The documents incident to the January, 1943, transaction were drafted and the terms and conditions determined by Lafayette J. Smallpage, an attorney, by whom, together with Frank Scott, an accountant, the entire arrangement was devised, after consultation with petitioner's father. The attorney determined that the face amount of the note should be in the sum of \$100,000, that no interest should be payable, and that the manner of repayment should be as recited in the note.

The note contained the following endorsements on the back, all being in the handwriting of the attorney except those for 1944 and 1945, which were in the handwriting of the accountant:

12/25/43	Gift	3,000.00
12/31/43	Credit by Error made in Computation of Value of Interest Sold	{ 50,000.00
	Changed per authority of	
	Smallpage 1/17/47	
12/25/44	By gift.....	3,000.00
12/25/45	By gift.....	18,000.00
1/25/47	Earnings for 1945.....	7,107.42

At the time of the execution of the note and the bill of sale it was understood between petitioner and his father that items E and F on the bill of sale, totaling \$65,000, were round figures representing an estimate of the father's share of the profits in the so-called Wold joint ventures, and that the figure would be subject to adjustment when the profits were known, with a corresponding adjustment to be made on petitioner's note.

The corrected figure was determined to be \$44,810.04, which involved a decrease of \$20,189.96, one-half of which in the amount of \$10,094.98 was included in the adjustments endorsed upon the note on January 17, 1947. That endorsement was in the sum of \$29,259.

Both petitioner and his father were unfamiliar with the purpose and reasons for the various en-

dorsements except that they did recognize that part of one endorsement was for the purpose of making the downward adjustment for profits from the Wold joint venture.

At the time of the transaction and for some years prior thereto, petitioner's father was not in good health and desired to bring petitioner into the business. This matter had been the subject of discussions for some time between petitioner and his parents and between his father and his mother. It was planned that petitioner would first work in the business as an employee for a few years in order to determine whether he could undertake the responsibilities incident to partnership. Upon the establishment of his worth as an employee, his father then intended to offer him a partnership interest, which he did in 1943.

The primary reason for having petitioner execute the note at the time of the creation of the partnership was to fulfill his father's wish to deal fairly and equitably with both petitioner and his sister, in so far as their distributive shares in their father's estate were concerned. It was intended that the balance remaining due on the note, together with adjustments for gifts made by the father, was to be deducted from petitioner's share in his father's estate in order to equalize the interest that petitioner and his sister would receive upon their father's death.

Petitioner's share of the partnership business was not acquired by purchase.

During 1943 petitioner received from the partnership a drawing account of \$200 per week, which represented a partial distribution of profits. He received no other profit distributions from the business in that year.

Petitioner is a graduate of the College of the Pacific, by which he was awarded a Bachelor of Arts degree in 1934. Following his graduation and for two years thereafter he worked at various service stations, part of the time as an employee and part of the time in business for himself. His earnings during this period averaged about \$150 per month. From 1936 to 1940 he was employed by the Union Oil Co., earning at the termination of this employment \$165 per month. In 1940 petitioner commenced working for his father at the Eddy Co. In that year, his father purchased the interest of the other partner, thereby creating an opportunity for petitioner to join the business. Although not an electrician, petitioner familiarized himself with the details of the business and gradually assumed general responsibility for its operations. At those periods when his father was away because of illness, petitioner alone ran the business. He first received a salary of \$40 weekly which was later increased to \$50 weekly. In 1941 he received some instruction from Downer on the methods and problems incident to the laying of sewers, and in 1942 was employed by the Goold & Downer joint venture at a salary of \$150 weekly to assist in that type of work. Such compensation was in addition to his salary from the Eddy Co.

During the taxable year petitioner devoted all of his time to partnership business. His activities consisted principally of the supervision of the electrical house-wiring work of the Eddy Co., and the supervision of workers and the general management of some of the joint-venture activities.

From 1942 to 1944 the partnership handled between six and seven million dollars worth of business. Petitioner was generally familiar with substantially all of the undertakings and participated in most of them.

The reasonable value of petitioner's personal services to the partnership in 1943 was \$10,000, which is also a reasonable allowance as compensation for such personal services as he rendered to the business.

On his 1943 tax return petitioner reported total income for income tax purposes of \$30,779.97, of which \$30,258.37 was said to represent income from the partnership. He received salary and wages of \$683.10 during the year and reported one-half thereof on his return.

On his 1943 tax return, petitioner claimed \$512.50 of the total exemption of \$1,200 allowable for husband and wife. He also claimed a credit of \$700 for dependents, listing two daughters as dependents. Respondent has allowed these amounts in the deficiency notice.

He claimed as a deduction on the return \$300 for entertainment and traveling expenses, representing his one-half of a total claimed expenditure of \$600, alleged to have been incurred in partnership business.

A portion of the deduction was said to cover expenses incurred for luncheons and dinners for inspectors and Government officials, interested in the various projects being constructed under the joint venture agreements. The remainder was to cover cost of gas and oil for trips made by petitioner in his personal car. On many trips a company car was used, and at all times gas and oil was available for company business at the company pumps, which petitioner used in his personal car.

Petitioner kept no records of any of these expenditures, and the amount deducted was estimated by the accountants. There was no agreement between petitioner and his father as to the method of handling expenses incurred in the partnership business, and he did not seek reimbursement from the partnership, although some portion may have been reimbursed by the partnership.

On his 1943 return, petitioner also claimed a deduction for personal income tax payable to the State of California in the amount of \$690.58 in computing income tax net income, and \$688.45 in computing victory tax net income. In his notice of deficiency, respondent allowed a deduction in the amount of \$2,219.21 in the computation of income tax net income, but allowed no deduction for the item in the computation of victory tax net income.

On or about October 24, 1947, the office of the Franchise Tax Commissioner of the State of California sent petitioner a formal notice of additional personal income tax proposed to be assessed, show-

ing a proposed additional assessment in the amount of \$1,484.51. Petitioner duly filed with the Franchise Tax Commissioner a protest against the proposed additional assessment, contesting his liability for payment thereof. Petitioner has not paid the proposed additional assessment and continues to contest his liability for the same.

On his tax return petitioner claimed an earned income credit of \$590.65. In the deficiency notice respondent allowed the minimum earned income credit of \$300. This minimum allowance resulted because of respondent's determination that the reasonable value of petitioner's services to the partnership was only \$5,000.

OPINION

Kern, Judge: In transactions between closely-related members of a family where tax liability is sought thereby to be affected "the statements, acts, and circumstances must all be considered and subjected to special scrutiny," James L. Robertson, 20 B.T.A. 112, 114. The mere self-serving statements of interested parties are not controlling as to the realities of the transactions. Frank J. Lorenz, 3 T.C. 746, 751; affirmed, 148 Fed. (2d) 527. The first issue in this proceeding, involving the question of whether petitioner acquired the one-half interest in his father's business assets by purchase or by gift, presents such a situation, and must be determined on all of the facts and circumstances shown by the record and not merely on the statements of petitioner and his father.

Petitioner argues that the transaction is accurately portrayed by the formal instruments executed incident thereto, such as the execution of the bill of sale and the note. Respondent urges that the principle underlying *Gregory v. Helvering*, 293 U. S. 465, calling for a realistic approach to tax problems, by viewing actual substance and not mere form, must lead to the conclusion that the acquisition was in reality by gift and not by purchase. We believe that petitioner has not overcome the presumptive correctness of respondent's determination, and that the record, in fact, supports respondent's position.

The facts incident to the transaction will not warrant a conclusion that the arrangements between petitioner and his father constituted a bona fide sale. The transaction does not appear to be one "that parties dealing at arm's length would have formulated." *Granberg Equipment, Incorporated*, 11 T. C. No. 85 (Oct. 28, 1948). Such factors as the absence of interest, the vague and unexplained endorsements on the note, and the failure to make any payments on the note in the first few years, the only substantial offsets being in the form of gifts, undermine the result petitioner wishes us to reach.

Even the testimony of the interested parties fails to persuade us that form should prevail. The whole program was designed by an attorney and by an accountant, and neither petitioner nor his father in testifying at the hearing herein could unravel many of the important details of the arrangements. None of the endorsements upon the note was made by them and none could be adequately identified.

Perhaps the best explanation of the transaction can be inferred from the testimony of petitioner himself. His father did not wish to prefer him over his sister in the ultimate distribution of the father's estate. While the transfer of the interest in the business was in reality a gift to the son in the nature of an advancement of an inheritance or legacy, a note was executed by the son, which was not intended by the parties to be evidence of a presently-enforceable debt arising out of a business transaction, but to be evidence of an advancement and which would serve as a means of equalizing, as between petitioner and his sister, the share of the father's estate which he would receive upon the latter's death.

Since it is our judgment that petitioner did not in reality acquire the interest in the business by purchase, but rather by gift, it accordingly follows that his interest was his separate property, and that the income therefrom was his separate income, except as to such part as is properly attributable to his own personal services. Cal. Civ. Code, Sections 163, 164, 687.

Respondent determined that the value of petitioner's personal services was \$5,000, and that only that amount constituted community income. Petitioner contends that respondent erred in asserting the value of his services to be only \$5,000. He contends further that additional error was committed in not determining that all of the income was community income except for a small allowance for in-

terest on petitioner's investment, as was done in *Lawrence Oliver*, 4 T. C. 684, and in *Ashley Manning*, 8 T. C. 537, or, in the alternative, in not applying the formula discussed in G.C.M. 9825 (1931), C.B. X-2, p. 146.

We believe that petitioner has convincingly shown that the reasonable value of his personal services was \$10,000, and we have found that to be the fact. Although we have concluded that respondent erred in his determination as to the amount of the value of petitioner's personal services, we cannot agree with petitioner that respondent committed error in the manner of the allocation of petitioner's income as between community and separate income. Substantially all of the profits of the enterprise resulted from the skill, judgment, and business acumen of petitioner's father and the use of his credit and capital. In this crucial respect the present proceeding is unlike such cases as *Lawrence Oliver*, *Ashley Manning*, both *supra*, and *Estate of Clarence B. Eaton*, 10 T. C. 869. They are cases where "the management, activities, and skill of petitioner constituted the principal contribution to the earnings of the business." *Lawrence Oliver*, *supra*, 688-689. The allowance of \$10,000 which we have found from the record to be reasonable compensation for petitioner's services and which petitioner and his father themselves considered apparently to be reasonable compensation for such service, in our opinion, adequately encompasses as remuneration the totality of petitioner's contribution to the opera-

tions of the business. In view of this finding we would not be warranted to resort to any formula for the purpose of determining what part of petitioner's income from the business represented community income and what part represented a return from capital and therefore separate income. Moreover, there is an absence of proof in petitioner's presentation as to the fair rate of return upon a capital investment in the type of business here before us which is an important element in such a formula, and in the application of the concept of such cases as *Lawrence Oliver, supra*. Recognizing this defect, petitioner, upon brief, requests that we take judicial notice of what the proper interest rate should be. This we are not permitted to do, even if we were aware of the rate. Cf. *Chesapeake and Virginian Coal Co.*, 13 B.T.A. 323.

Our disposition of these two questions requires a consideration of one other alternative point made by petitioner, namely, that because of the reallocation of income compelled by our result, there should be adjustments upward made in the amount of personal exemption and dependency credits claimed by petitioner on his return.¹ We cannot now disturb the division made between petitioner and his wife, as petitioner's wife is not before us in this proceeding, and no avenue is now open whereby such adjust-

¹Petitioner and his wife filed separate returns for the taxable year in which they divided as between themselves the personal exemption and credits for dependents allowed by law.

ments can be made. *A. L. Lusthaus*, 3 T. C. 540, 543; affirmed, 149 Fed. (2d) 232, 327 U. S. 293.

There still remains for consideration four additional issues.

The first involves the deduction of \$300 for traveling and entertainment expenses. Aside from the absence of any evidence as to what, if any, amounts were expended for these purposes and aside from the fact that petitioner testified that he may have been reimbursed for some or all of these alleged expenditures, petitioner cannot succeed for the additional reason that if any expenditures were so made, they were partnership expenses; as such they were proper deductions in the partnership return. *Hiram C. Wilson*, 17 B.T.A. 976. Respondent's determination in this issue is sustained.

Secondly, we are confronted with the question of the proper allowance for accrued California personal income tax of petitioner for Federal income tax purposes. On his return, petitioner claimed the amount of \$690.58. In the notice of deficiency, respondent allowed an increased deduction for the California tax on the basis of the estimated amount petitioner would be required to pay. After the state taxing authorities proposed an additional assessment of personal income tax in the amount of \$1,484.31, petitioner filed a protest with them, contesting his liability therefor. He has not paid the additional tax, nor has he withdrawn his protest. He continues to contest his liability.

Because of the contest, both as to liability and

amount, petitioner, even though on the accrual basis, is precluded from claiming as a deduction any greater amount than that taken by him on his return. *Security Flour Mills Co. v. Commissioner*, 321 U. S. 231; *Dixie Pine Products Co. v. Commissioner*, 320 U. S. 516. Petitioner seeks to insulate himself from the rule of these cases by contending that the issues raised by the state authorities are the same as those presented to us, and that the state authorities have expressed their willingness to rely upon our decision in the determination of the additional state tax assessment. We fail to see that petitioner by this argument has made any meritorious distinction, and respondent must be sustained on this issue.

The third issue is whether the state income taxes are deductible in computing victory tax net income, pursuant to Section 451 of the Code.² Petitioner concedes that the question has been decided adversely to him in *Anna Harris*, 10 T. C. 818, but urges that we overrule that decision. We have carefully considered his argument. We believe, however, that the *Harris* case was correctly decided and is dispositive of this issue in respondent's favor.

²Sec. 451. Victory Tax Net Income.

(a) Definition.—

* * * * *

(3) Taxes.—Amounts allowable as a deduction by section 23 (c), to the extent such amounts are paid or incurred in connection with the carrying on of a trade or business, or in connection with property used in the trade or business, or in connection with property held for the production of income.

Lastly, we must decide the problem of the earned income credit allowable to petitioner, which the parties urge may require a consideration of the proper method of computing that credit, under section 25 (a) (3) and (4) of the Code.³

Although the parties argue over the procedure to be followed in applying the limitation contained in Section 25 (a) (4) (A), where income is derived

³Sec. 25. Credits of Individual Against Net Income:

(a) Credits for Normal Tax Only.—There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

* * * * *

(3) Earned Income Credit.—10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(4) Earned Income Definitions.—For the purpose of this section—

(A) “Earned income” means wages, salaries, professional fees, and other amounts received as a compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

from a business, in which both personal services and capital are material factors, and the community method of reporting income and deductions is employed by the taxpayer and his spouse, we are not called upon to resolve that problem. Our factual determination that a reasonable allowance as compensation for petitioner's personal services rendered to the partnership was \$10,000, and, as such, was community income, gives the parties the additional data necessary to compute the amount of earned income credit to which petitioner is entitled, without necessity of applying the limitation provisions of section 25 (a) (4) (A). This can be computed under Rule 50.

Decision will be entered under Rule 50.

Entered Jan. 6, 1949.

The Tax Court of the United States
Washington

Docket No. 15072

E. R. GOOLD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Findings of Fact and Opinion entered in the above-entitled proceed-

ings on January 6, 1949, counsel for respondent filed a recomputation of petitioner's tax liability on February 17, 1949. Hearing under Rule 50 was held on March 23, 1949, and on March 24, 1949, counsel for petitioner filed an acquiescence to respondent's computation. Now, therefore, it is

Ordered and Decided: That there is a deficiency in petitioner's income and victory tax for the taxable year ended December 31, 1943, in the amount of \$17,793.84.

/s/ J. W. KERN,
Judge.

Entered March 28, 1949.

Served March 28, 1949.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the following statements of fact shall be taken to be true in this proceedings and received as evidence herein, subject to the right of either party to offer further and additional evidence not inconsistent with or contrary to the matters herein stipulated:

1. Rolly Goold and Kathryn Goold, his wife, were married on March 7, 1907, and ever since have been and now are husband and wife.

2. As of December 31, 1942, the property described in the document bearing the title "Bill of Sale" a copy of which is attached hereto and marked Exhibit 1-A was owned by Rolly Goold (in this proceeding sometimes referred to as petitioner's father) and Kathryn Goold as community property.

3. As of December 31, 1942, the said Rolly and Kathryn Goold also owned as their community property the following:

Cash on Deposit	\$22,481.61
Cash Value of Life Insurance	17,000.00
Stock and Bonds	30,673.09
Real Estate Investments	7,000.00
Personal Residence	6,500.00
	<hr/>
	\$83,654.70

The last three of the above-mentioned items are listed at their cost of acquisition. As of the above date neither Rolly nor Kathryn Goold owned any property other than that described in this paragraph and in paragraph 2 above.

4. On December 31, 1942, the said Rolly and Kathryn Goold had two children, to wit: Leila Goold McQuilken, a daughter, then 36 years of age, and E. R. Goold, a son (petitioner herein), then 34 years of age.

5. The document referred to herein as Exhibit 1-A was executed by petitioner's father on January 2, 1943. On the same date petitioner executed and delivered to his father a certain document, photostatic copies of the face and back of which are

attached hereto and marked Exhibit 2-B and Exhibit 3-C, respectively. Thereafter, on January 21, 1943, petitioner and his father filed a certificate of co-partnership doing business in the name of R. Goold & Son, in the office of the Clerk of the County of San Joaquin, State of California.

/s/ LAFAYETTE J. SMALLPAGE,
Counsel for Petitioner.

/s/ FRANK C. SCOTT,
Counsel for Petitioner.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

EXHIBIT 1-A

Bill of Sale

For and in Consideration of the Sum of One Hundred Thousand (\$100,000.00) Dollars, payment of which is acknowledged by the execution and delivery of a promissory note dated January 2, 1943, I, the undersigned, do herewith sell and transfer

unto E. R. Goold an undivided one-half interest in and to the following assets, to-wit:

A. Eddy Electric and Mechanical Company. Assets valued at	\$ 32,560.83
B. An undivided one-half interest in the R. Goold and A. E. Downer joint venture as shown upon the book of accounts	51,496.04
C. An undivided one-half interest in the R. Goold and F. R. Zinck joint venture as shown upon the book of accounts	10,115.09
D. An undivided one-half interest in the R. Goold and A. R. Liner joint venture as shown upon the book of accounts	2,500.00
E. An undivided one-half interest in the R. Goold and C. L. Wold joint venture as shown upon the book of accounts	25,000.00
F. An undivided one-half interest in the "Marysville" Contract as shown upon the book of accounts.....	40,000.00
<hr/>	
Total	\$161,671.96

This bill of sale is made for the purpose of enabling the formation of a partnership this day made between the undersigned, R. Goold, and the said E. R. Goold, the assets of which will consist of the foregoing.

Dated: January 2, 1943.

/s/ R. GOOLD.

State of California,
County of San Joaquin—ss.

On this Second day of January, 1943, before me, the undersigned, Notary Public in and for said County and State, personally appeared R. Goold, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and official seal the day and year first above written.

[Seal] LAFAYETTE J. SMALLPAGE,
Notary Public in and for said County and State.

EXHIBIT 2-B

\$100,000.00 Stockton, California, January 2, 1943.

1. For value received I promise to pay to the order of R. Goold and Kathryne Goold, his wife, or the survivor thereof, the sum of One Hundred Thousand (\$100,000.00) Dollars without interest, payable only out of the hereinafter specified source, to-wit:

The payee, R. Goold, and myself have this day formed a partnership known as "R. Goold & Son." I agree that I will pay upon said promissory note a sum equal to twenty-five (25%) percent or more of the annual profits which shall be made to and received by me out of the operation of said business.

2. Should default be made in the payment of any installment of the principal hereof when due, or in any installment of the interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest shall be payable in lawful money of the United States, of the present standard value.

3. In event that an action at law be instituted to collect this note, or any portion thereof, or any portion of the interest due hereon, I agree to pay, in addition to the costs and disbursements provided by law, such additional sum as the court may deem reasonable as an allowance to the holder hereof for the fees of its attorney.

/s/ E. R. GOOLD.

EXHIBIT 3-C

12/25/43 Gift	\$ 3,000.00
12/31/43 Credit by Error made in Com- putation of Value of Interest Sold....	{ 50,000.00
Changed per Authority of Smallpage, 1/17/47	
12/25/1944 By gift	3,000.00
12/25/1945 By gift	18,000.00
1/25/47 Earnings for 1945	7,107.42

[Endorsed]: Filed T.C.U.S. March 29, 1948.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

I.

Jurisdiction

E. R. Goold, your petitioner on review, hereinafter referred to as the "petitioner," respectfully petitions this honorable Court to review the decision of The Tax Court of the United States entered on the twenty-eighth day of March, 1949, and finding as follows: That there was a deficiency in the petitioner's income and victory taxes for the year ended December 31, 1943, in the amount of \$17,793.84 instead of an overpayment of such taxes refundable to the petitioner in the amount of \$217.37 as claimed by him in the proceeding before the said Court.

Your petitioner is an individual residing at No. 1225 North Hunter Street in the City of Stockton in the State of California. The respondent on review, hereinafter referred to as the "respondent" is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States of America, Hon. George J. Schoeneman.

The income tax return in respect of which the aforementioned taxes were paid and in respect of which the aforementioned deficiency and tax liability arose were filed by your petitioner with the

collector of internal revenue for the first collection district of California, located in the City of San Francisco, State of California, which is located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

Jurisdiction in the said Court to review the decision of The Tax Court of the United aforesaid is founded on sections 1141, 1142, and 1143 of the Internal Revenue Code (Pt. 1, 53 U. S. Statutes at L.; Title 26, United States Code).

II.

Nature of Controversy

On January 2, 1943, the petitioner and his father, R. Goold, entered into a partnership under the firm name of R. Goold & Son for the purpose of operating a business which the said father had theretofore conducted as a sole proprietorship, the assets of which business had been owned prior thereto by the petitioner's father and mother as their community property according to the laws of California. The transfer of the one-half interest acquired by the petitioner in his father's business was made by a duly executed and acknowledged bill of sale from the said father to the petitioner in which the interests in the going business theretofore conducted by the father and the said father's interests in certain joint ventures or partnerships in construction contracts were described in general terms and valued at approximate and estimated amounts. In consideration for such transfer the petitioner executed

and delivered to his father a note for \$100,000.00 without interest and payable at the rate of "twenty-five (25%) percent or more of the annual profits which shall be made to and received by me out of the operation of the said business."

The petitioner was married and living with his wife, Elizabeth, and four minor children, one of whom was born on June 29, 1943, during all of that year.

In compiling and filing their separate income and victory tax returns, which were prepared on the accrual basis of accounting, for the calendar year 1943, the petitioner and his said wife each returned as income one-half of the petitioner's distributive share of the partnership income of the said partnership, R. Goold & Son, as such share had been returned in the partnership return of income for the same taxable period.

After an examination of the partnership books of R. Goold & Son and of the several joint ventures of which that partnership was a member the agents of the respondent determined (1) that the ordinary distributive income of the partnership business was \$1,423.76 less than had been returned, i.e. \$119,609.73 instead of \$121,033.49; and (2) that all of this income was taxable to the petitioner's father and mother, Mr. & Mrs. R. Goold, and none thereof taxable to the petitioner and his wife on the basis that the partnership of R. Goold & Son was not to be recognized for income tax purposes. After protest of this second finding had been filed with the

internal revenue agent in charge at San Francisco, California, the respondent's position was altered by accepting the partnership as valid but holding that the petitioner's interest therein had been acquired by gift from his father rather than by purchase with the effect that the partnership interest and the income therefrom were to be treated as the petitioner's separate property under the California law rather than as community property. Since the petitioner and his wife had returned the distributive income equally in their separate returns on the basis of its being community property income from a community property interest in the partnership acquired by purchase, the result of the final holding was to transfer approximately \$28,000.00 of partnership income to the petitioner's return from that of his wife and to subject such transferred income at progressively higher rates of surtax so that the deficiency determined by the respondent on the petitioner's return was over \$6,000.00 larger than the refund the respondent was willing to allow on the return of the petitioner's wife.

In the proceeding in The Tax Court of the United States, wherein documentary and oral testimony and a stipulation of facts were introduced with respect to this issue, that Court modified the respondent's determination only to the extent of treating \$10,000.00 of the petitioner's share of the distributive income as community property attributable to the petitioner's personal services in lieu of \$5,000.00 so treated by the respondent, and found that the re-

mainder of such distributive income was the separate property income of the petitioner as from property acquired by gift. The validity of such a finding by that Court is the principal issue in this petition for review.

A subordinate issue involved in this petition for review relates to the petitioner's deduction of his accrued California income tax on his distributive income from the partnership or R. Goold & Son in computing his net income subject to the victory tax levied for the calendar year 1943 under the provisions of sections 450 to 456, inclusive, of the Internal Revenue Code, as in effect for the calendar year 1943. This is purely legal issue involving the interpretation and construction of provisions of section 451(a)(3), *idem*, providing for the deduction of taxes "paid or incurred in connection with the carrying on of a trade or business."

III.

Prayer

The said E. R. Goold, petitioner herein, being aggrieved by the findings of fact and conclusions of law contained in the Memorandum Findings of Fact and Opinion entered by The Tax Court of the United States in the said proceedings on January 6, 1949, under the said Court's Docket No. 15072, and its decision entered pursuant thereto on March 28, 1949, prays that this honorable Court may review the said findings of fact and conclusions of law and determine that they have been made and

entered in error according to the following assignments of error.

IV.

Assignments of Error

The petitioner assigns as error the following acts and omissions of The Tax Court of the United States:

1. The finding that the petitioner's share of the partnership business of R. Goold & Son was not acquired by purchase.

2. The finding that the primary reason for the petitioner's execution of the note to his father at the time of the creation of the partnership was to fulfill his father's wish to deal fairly and equitable with both the petitioner and his sister, insofar as their distributive shares in their father's estate was concerned; and that it was intended that the balance remaining due upon the note was to be deducted from the petitioner's share in his father's estate in order to equalize the interests that the petitioner and his sister would receive upon their father's death.

3. The failure of the said Court to apply to the transactions by which the said partnership interest was acquired by the petitioner and to observe the provisions of section 172 of the Civil Code of the State of California.

4. The failure of the said Court to find and hold that the accrued California income tax on his share of the distributive income of the said partnership for the calendar year 1943 was a tax "paid or in-

curred in connection with the carrying on of a trade or business'' and deductible according to the provisions of section 451(a)(3), Internal Revenue Code.

/s/ LAFAYETTE J. SMALLPAGE,
Attorney for the Petitioner.

State of California,
County of San Joaquin—ss.

Lafayette J. Smallpage, being first duly sworn, says that he is counsel of record in the above-named cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements of fact contained therein; that the statements of fact contained therein are true to the best of his knowledge, information, and belief; that this petition for review is not being filed for delay; and that he believes that the petitioner is justly entitled to the relief sought.

/s/ LAFAYETTE J. SMALLPAGE.

Subscribed and sworn to before me this twentieth day of June 1949. ,

[Seal] /s/ HAZEL SMIKLE,

Notary Public in and for the
Said State and County.

[Endorsed]: Filed T.C.U.S. June 24, 1949.

The Tax Court of the United States

Docket No. 15072

E. R. GOOLD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PRAECIPE FOR RECORD

To the Clerk of The Tax Court of the United States:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the petition for review heretofore filed by the petitioner in the above-entitled cause, a transcript of the record in the above-entitled cause, prepared and transmitted as required by law and by the rules of the said Court, and to include in the said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before The Tax Court of the United States.

2. Pleadings before The Tax Court of the United States as follows:

- (a) Petition for redetermination;
- (b) Answer of the respondent;
- (c) Amended answer of the respondent filed on March 29, 1948;

(d) The petitioner's reply to the amended answer also filed on March 29, 1948.

3. The findings of fact and opinion of The Tax Court of the United States.

4. The decision of the said Court.

5. The stipulation of facts filed March 29, 1948.

6. The petition for review filed by the petitioner.

7. This praecipe.

You are also requested to transmit to the said Clerk of the said Circuit Court of Appeals the original stenographic transcript of the proceedings of the Division of The Tax Court of the United States in this cause held and had at San Francisco, California, on March 29 and 30, 1948, and the following Exhibits pertinent to the petition for review filed at the hearing of this cause at San Francisco on the days aforesaid, viz: Exhibits 1-A, 2-B, 3-C, and 28.

/s/ LAFAYETTE J. SMALLPAGE,
Counsel for the Petitioner.

[Endorsed]: Filed T.C.U.S. June 24, 1949.

[Title of Tax Court and Cause.]

PROCEEDINGS

EVERETT R. GOOLD

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Smallpage:

Q. Mr. Goold, when were you born?

A. September the 24th, 1911.

Q. And who is your father and mother?

A. Mr. R. Goold is my father, and Mrs. Katherine Goold is my mother.

Q. And what other children were there in your family besides yourself?

A. I have a sister, Lela Katherine McQuilkin.

Q. What schooling did you have, Mr. Goold?

A. I attended the Stockton High School and the College of the Pacific, graduated from both.

Q. When did you graduate from the College of the Pacific? A. 1934.

Q. And thereafter what did you do?

A. Well, I worked for—first of all, I was in the service station business for myself for a year or two, and I went to work for the Union Oil Company in 1936, and worked for the Union Oil Company until 1940.

Mr. Marcussen: Would you speak a little louder, Mr. Goold?

(Testimony of Everett R. Goold.)

The Witness: Do you want me to start that over again?

The Court: No.

Mr. Marcussen: No, that is all right.

The Witness: I worked for the Union Oil Company until the year of 1940, and June of 1940 I went in business with my father, went to work for him at that time.

Q. (By Mr. Smallpage): During the year 1940, what did you do for your father?

A. Well, in the first place, when I first went to work for him, I managed the—I was Sales Manager for the appliance department in the electrical business.

Q. What business was your father engaged in at that time? [33*]

A. He was in the electrical and mechanical business, along with the electrical appliances.

Q. Did he do business under the name of Eddy—

A. (Interposing): Eddy Electrical and Mechanical Company.

Q. And that was in Stockton?

A. That was in Stockton.

Q. Now, during the year 1941 what did you do?

A. The year of 1941 I took over the management of—was managing the sales of appliances, and also managing the electrical business, and I believe it was the end of that year that I started to supervise railroad work, which we were doing.

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Everett R. Goold.)

Q. Now, during that year did your father engage in other lines of activity, other than the Eddy Electrical Appliance? A. Yes, sir.

Q. What type of activity?

A. Well, he had several joint ventures going at the time. I believe one was with Thomas C. Buck, in which they were constructing some buildings at the Stockton Air Field, and we were doing railroad work at the Stockton Ordnance Depot. There were various other contracts that I don't recall at the moment.

Q. Now, during the year 1942, what did you do?

A. Well, the year 1942 I practically took over the running of the business at that time. My father—I had [34] supervision, field supervision. All the books were handled by competent accountants, and the office work was handled in our office, but I was doing the field work, the supervision and running of the jobs.

Q. Now, what type of work was under construction by you and your father at that time?

A. Well, we had railroad work and underground utilities, electrical work, and we were joint venturers in—that is, my father at that time was joint venturer with several—he was in with several joint venturers.

Q. Was your father doing war work?

A. Almost exclusively.

Q. When you state you were doing railroad work, do you mean that you built railroads?

A. That is right.

(Testimony of Everett R. Goold.)

Q. Grading and so forth?

A. We installed the railroad trackage in the ordinance depot.

Q. At Stockton? A. At Stockton.

Q. Did you have anything to do with the construction of the Japanese Assembly Camp at Stockton?

A. Yes, at the Japanese Assembly Camp I was in charge of all the electrical work, and worked on that night and day, in fact, completed some 251 buildings in 19 days, I think, at [35] that time.

Q. That was at the request of the government?

A. That is right.

Q. Now, you stated that during that year, 1942, you were about the only one at the business. What was the condition of your father's health?

A. Well, for some time he was ill. He has arthritis, and is subject to attacks of it periodically, and for one period he was down and out of the business for some six weeks, at home and in the hospital. It was practically up to me to run the business at that time.

Q. During the fall of 1942 did you have any conversation with your father and your mother with respect to becoming a partner in the business?

A. Well, that had been the subject of discussion for some time. In fact, when I first went to work for my father it was understood if I was capable that I would be allowed to purchase an interest in the business.

(Testimony of Everett R. Goold.)

Q. Well, what did he say? Withdraw that.

A. Then in the year of '42, why, at the time that he was—I believe he was ill at that time, he suggested this partnership, and I told him that I would be tickled to death to get an interest in the business.

Q. And what did you do then with respect to acquiring an interest in the business? [36]

A. Well, it was referred to our attorneys and our accountants to see how the business could be set up, and how it could be purchased.

Q. And you say it was referred to your counsel, do you mean myself?

A. Mr. Smallpage and Mr. Scott.

Q. Yes. Now, I call your attention to the document which you hold in your hand, Plaintiff's Exhibit 1-A, Petitioner's, rather, entitled, "A Bill of Sale."

Was that document given to you?

A. It was.

Q. And who signed it, to your knowledge?

A. Well, my father signed a copy of it, and I signed a copy of it.

Q. And I call your attention to the item set forth in that Bill of Sale, the first being the Eddy Electric Assets, valued at \$32,000, round figures.

From what source were those figures taken?

A. I believe that was the book value of the Eddy Electric Mechanical Company at that time.

Q. Incidentally, what, if anything, was said be-

(Testimony of Everett R. Goold.)

tween you and your father with reference to the value of the assets that would be sold to you in this particular transaction?

A. Well, he said that in order to get this thing organized and going, that we would estimate certain values until [37] we could get a final book analysis. We would set the agreement up, and then it would be adjusted after we found out what the actual book values were.

Q. Now I call your attention to the items under the heading, "F," "E," and "F," respectively, twenty-five thousand and forty thousand dollars.

What did those items constitute or reflect?

A. Well, R. Goold and C. L. Wold, joint venturers, in fact, C. L. Wold, P. Midbust and Anderson and Ringrose, and C. E. Kennedy, and C. E. Kennedy being in fact R. Goold, J. C. McIntosh and C. E. Kennedy, and that was an estimated profit for the year, I believe, or estimated return.

Q. An estimated profit for what year, Mr. Goold?

A. For 1942 or '43. It was anticipated profit for '43, I believe.

Q. In other words, those monies had not been actually acquired by your father at that time?

A. That is right.

Q. Where was that contract being carried out?

A. In Marysville, California.

Q. And was that for the government?

A. For the government, for the United States Engineers.

(Testimony of Everett R. Goold.)

Mr. Smallpage: May I have Exhibit 20-T?

(The Clerk handed the document to Mr. Smallpage.) [38]

Q. (By Mr. Smallpage): I present to you Exhibit 20-T, purporting to be a statement covering the profits upon that particular venture for R. Goold. You will notice that that is entered at the figure of \$44,810.04? A. Yes.

Q. Does that reflect the adjusted figure which was the actual amount of the profits received in the partnership for the year 1942 that had been earned, but received in '43?

A. That, I believe, is correct.

Mr. Marcussen: Which figure is that, Counsel? The forty-four thousand dollar figure?

Mr. Smallpage: Yes.

Q. (By Mr. Smallpage): Now, during that year of 1943, what contracts, what work was carried on by the partnership of Goold and Son?

A. R. Goold and Son were in a good—besides the Electrical business were in joint ventures with A. E. Downer, F. R. Zinck, C. E. Kennedy.

Q. I am not so much interested with the names of the people.

A. With the types of work?

Q. I am interested in the type of work that was done.

A. Well, we carried on—we did some work for the Navy, sewer work at the Stockton Pollock Shipyards, and we finished up the Stockton Ordnance

(Testimony of Everett R. Goold.)

Depot Railroad, installed [39] storm sewers at the Stockton Ordnance Depot, built a classification railroad yard for the Western Pacific under the direct supervision of the United States Engineers, and put in storm sewers at the Lathrop Holding and Reconversion Point. Well, there were a number of them. I can't recall the jobs we did in that year. We were quite active.

Q. Well, in dollars and cents, approximately how many hundreds of thousands or millions of dollars of business flowed through your office during that year?

A. Oh, between six and seven million dollars, probably.

Q. What, in your opinion, assuming that you were not a partner in that business, would have been a fair return for your salary for your efforts for the work which you did during that year?

Mr. Marcussen: I object to the question, if your Honor please.

Mr. Smallpage: Submit it.

The Court: I am going to overrule the objection. It is a very interesting point. I don't know whether I am exactly correct or not. The owner of property can testify, without being an expert, as to his opinion as to the value of that property owned. I would assume that the owner of work and services as a rule would be the same, but I am not sure as to that, but I think that is correct. At any rate, I will overrule the objection. [40]

(Testimony of Everett R. Goold.)

A. Well, taking——

The Court (Interposing): Excuse me a minute.

I should point out to counsel that the authorities which indicate that the owner of property can testify as to the value of that property without being experts are also to the effect that the probative value of the testimony is not great.

Mr. Smallpage: That is correct, your Honor, but the difficulty sometimes comes about that it is unable to produce witnesses and testimony relative to the point in question. I understand that.

The Court: Go ahead. I overrule the objection.

Mr. Marcussen: May I state for the record that the basis of Respondent's objection is that it has not been set forth clearly in the record all that Petitioner did in here in the taxable year involved, for which I take it the question is directed to the year 1943, is it, counsel?

Mr. Smallpage: That is correct.

Mr. Marcussen: And on the further ground that he is not competent to testify.

The Court: Proceed.

Q. (By Mr. Smallpage): Give your answer, please.

A. Well, my answer to that is that there were men working—— [41]

Q. (Interposing): No, just a minute. Give your figure. I asked you what you thought to be a reasonable compensation for you on a salary basis?

(Testimony of Everett R. Goold.)

A. I would say \$1,000 a month was not too much.

Q. Now, what is the basis for the drawing of that conclusion?

A. Well, from the basis of pay that we paid men under my supervision.

Q. Give the names of several men and their respective salaries and what they did.

A. Well, Mr. A. E. Downer received in the neighborhood of \$7500 a year, I believe it was \$150 a week, and Mr. C. E. Kennedy, for taking care of the Marysville operation, received \$1,000 a month, and inasmuch as I was a part and parcel to that work, and it was going through our books, I think I was entitled to every bit as much as anyone that was on the payroll.

Q. Approximately how many hours a day did you spend in working during that year?

A. Well, that is pretty hard to say, from twelve to fourteen hours, I imagine, it would average.

Q. Now, at the time that this transaction was consummated between your father and yourself, did you execute and deliver to him a note?

2-B, please. [42]

Mr. Marcussen: That is all stipulated, counsel. I suggest you take it and put it in his hands and ask him another question.

Q. (By Mr. Smallpage): Which I present to you, and which is marked 3-C? Did you——

A. (Interposing): Yes.

Q. That is your signature?

(Testimony of Everett R. Goold.)

A. That is right.

Q. Now, I call our attention to the reverse portion thereof, which is marked 3-C. Do you recall at the time that this particular item was marked thereon in my handwriting, "Credit to error made in the computation of value of interest sold, change for authority is Smallpage, 1/17/47, \$29,259?"

A. I recall that.

Q. Who was present at the time that that endorsement was made?

A. My father and myself, and I believe you were.

Q. Yes. And was that made solely in order to readjust—

Mr. Marcussen (Interposing): I object to the question on the ground that it is leading.

The Court: Sustained.

Q. (By Mr. Smallpage): What was said at that time between you, your father and myself with reference to the making of that endorsement? [43]

A. That was made to adjust—

Q. (Interposing) What was said, just give the conversation.

The Court: The substance of it.

Mr. Smallpage: The substance of it.

A. Well, the reason for making that entry was to adjust the final returns on the C. O. Wold and Anderson and Ringrose returns for that year.

Q. (By Mr. Smallpage): Well, was anything said with reference to the statement in the Bill of

(Testimony of Everett R. Goold.)

Sale wherein was set forth the items \$25,000 and \$40,000?

A. Yes, I remember the discussion on it, but it is—I can't remember it at this time.

Q. Well, was there anything said with respect to the item of \$44,810.04 as shown in Exhibit 20-T?

A. That was the final adjustment in other words, these were estimates, that the Bill of Sale was drawn up on, was what the note was finally adjusted to.

Q. And did or did not your father request me to make that entry on the note? A. He did.

Q. At the time that that note, Exhibit 2-B, was executed, was there anything said between you and your father with respect to the time—— [44]

Mr. Marcussen (Interposing): I object to the question on the ground that it is leading.

The Court: Sustained. Ask him for the conversation.

Mr. Smallpage: I was just going to, your Honor. I said at the time the note was executed was there anything said with reference to the time of payment. That is what I intended to ask.

A. Definitely that was discussed. At the time I asked him how we would arrive at—before the note was drawn up I asked him how we were going to pay for the business, and he said that they would like a non-interest bearing note, and it would be paid from the net profits, my share of the net profits of the business.

Q. (By Mr. Smallpage): And what did you say?

(Testimony of Everett R. Goold.)

A. I said I couldn't accept anything better than that.

Q. Was there anything said with reference to the withdrawals from the business from time to time of the net profits?

A. Well, they were to be withdrawn when the business warranted it, when it was in such a cash position that it could be withdrawn, after the books were closed and the money was distributed payments were to be made.

Is that the question?

Q. Well I call your attention to this particular paragraph in the note, for the purpose of refreshing your recollection, [45] Paragraph 2:

"Should default be made in the payment"—no, paragraph 1, pardon me.

"The payee, R. Goold and myself have this day formed a partnership known as R. Goold and Son. I agree that I will pay upon said promissory note a sum equal to 25 per cent or more of the annual profit which shall be paid to and received by me out of the operation of said business."

Do you recall any discussion that took place at the time that that particular phrase was——

A. (Interposing): Well, that was to be paid when the distribution of the profits was made.

Q. I call your attention to the fact that on the reversed side of this note, 3-C, that the last item of endorsement is the sum of \$7,107.42. I present to you what purports to be a cancelled check for that amount, numbered 914.

(Testimony of Everett R. Goold.)

Did you execute and deliver that check to your father?

A. (Examining document): I did.

Q. And was it paid? A. It was.

Q. Subsequently did you make any further payments on that note which are not shown by endorsements thereon?

A. Yes, I made one other.

Q. I present to you Check No. 924 in the amount of [46] \$3,040.04. What is the date of that check?

A. March the 26th, 1947.

Q. And was that delivered by you to your father? A. It was.

Q. And was the check paid? A. Yes.

Mr. Smallpage: We offer these two checks in evidence and ask that they be marked Petitioner's Exhibit next in order.

The Court: Any objection?

Mr. Marcussen: No objection.

The Court: Received in evidence.

The Clerk: Check No. 914 is Exhibit No. 24, and Check No. 924 is Exhibit No. 25.

(The checks referred to were marked and received in evidence as Petitioner's Exhibits Nos. 24 and 25.)

Q. (By Mr. Smallpage): Mr. Goold, was there anything said at any time when you acquired the interest of this business that the same was being given to you by your father and mother as a gift?

A. There was not anything discussed on that.

ELIZABETH GOOLD

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name and address.

The Witness: Elizabeth Goold, 1225 North Hunter Street, Stockton, California.

By Mr. Marcussen:

Q. Mrs. Goold, I hand you here a paper which is the original of Exhibits 2-B and 3-C introduced in evidence in this case, and I want to ask you if you have ever seen that before? That is a piece of paper, Exhibit 2-B is this side of it, and Exhibit 3-C is the other side, containing endorsements?

A. No, I never have.

Q. You have never seen that? [48]

A. No.

Q. Now, I want to call your attention to the fact that this purports to be a note signed by your husband in favor of his father in the amount of \$100,000, with certain qualifications listed here as to the obligation to pay that amount, and on the back thereof these endorsements, and I want to ask you whether you know anything about any of these endorsements which have been listed here as gifts?

A. No, I don't.

Q. You don't. Did your father-in-law at any time talk to you about these endorsements?

A. No, he didn't.

(Testimony of Elizabeth Goold.)

Q. Did he ever at any time make any gifts to you? A. Well, at Christmastime.

Q. Can you describe generally what they were?

A. Oh, a small check or a war bond, or something.

A. A war bond. How large a war bond?

A. A hundred dollars.

Q. A hundred dollars? A. Yes.

Q. And outside of that he made no gifts to you?

A. Not to me, no.

Q. And did he ever tell you at any time that he had made any other gifts to you than those he had delivered to you? A. No, he has not. [49]

* * *

Cross-Examination

By Mr. Smallpage:

Q. Mrs. Goold, do you recall the time when your husband acquired an interest in your father-in-law's business?

A. Well, I heard him—he told me that he had a chance to, but that is about all. He doesn't discuss his business with me.

Q. Well, was there anything said at that time between you and himself with respect to the terms under which he was going to acquire that business?

Mr. Marcussen: Just a moment. Objection on the ground, please, until it is ascertained who the parties are—a conversation between this witness and who, counsel?

The Court: Her husband.

(Testimony of Elizabeth Goold.)

Mr. Smallpage: Her husband. This is cross-examination of your witness. [50]

Mr. Marcussen: If your Honor please, I will object to the question on the ground it is not within the scope of the direct.

The Court: Oh, I think so. The examination was with regard to the instrument which has been testified is the consideration in the deal.

Q. (By Mr. Smallpage): Do you recall my question, Mrs. Goold?

A. Well, he told me that he would have to sign a note, to get the money to buy into his father's business, to pay for it out of the profits of the business, but other than that, I don't know anything about his business transactions.

Q. How many children have you?

A. Five.

Q. It keeps you pretty busy to keep the house, is that it? A. Yes, it does.

Q. Your husband tends to the business affairs, you take care of the household, is that it?

A. He always has. [51]

* * *

EVERETT R. GOOLD

resumed the witness stand.

Cross-Examination

By Mr. Marcussen:

Q. All right. Now I want to take you back to the first part of your testimony in which you testified you were employed, as I recall, by the Union Oil Company prior to 1940? A. Yes, sir.

(Testimony of Everett R. Goold.)

Q. How long had you been employed by the Union Oil Company? [58]

A. Four years.

Q. Four years. When did you graduate from college, did you say? A. 1934.

Q. What did you do between 1934 and 1936?

A. '36? In 1934 and '36 I had my own service station and business for one year, and then I worked for the firm of Grupe and Weaver for a portion of the year.

Q. What business were they in?

A. Service station business.

Q. And when you had your own service station, what did you make in that year that you were in the station?

A. Well, I imagine, I think that——

Mr. Smallpage: (Interposing.) To which we object. It is immaterial.

The Court: Overruled.

The Witness: Well, I can't tell you what I made. I believe we drew somewhere in the neighborhood of \$150 a month out of the business. I had a partner with me in the business.

Q. (By Mr. Marcussen): You each drew \$150 a month? A. Approximately, yes.

Q. Do you recall whether the \$150 a month was more than you actually made, or approximately correct? [59]

A. No, I think that was about right, about the amount of money we made.

(Testimony of Everett R. Goold.)

Q. Yes. Then how did you come to abandon that enterprise and go with Grupe and Weaver?

A. Well, they offered me a better position, supposedly; I thought it was a better position.

Q. And what was your position with them?

A. I was a manager of the service station, of the super service station.

Q. What did you make in the year you were with them? A. \$150 a month.

Q. And then in the four years you were with Union Oil Company, how much did you earn?

A. It varied. I started at \$110 a month, when I quit I was making \$165 a month and all expenses, a small expense account to take care of an automobile and entertainment.

Q. What were the circumstances attending your abandonment of that employment and in your joining your father?

A. Well, my father purchased his partner's interest in the Eddy Electrical and Mechanical Company in the first part of 1940, and that left an opportunity for me to get into the business with him.

Q. And what did you receive from him when you first started, and also until the time, continuing on until the time you became a partner? [60]

A. I received \$40 a week to start with, I believe it was the first year, a little over a year, and then I received \$50 a week after that, and \$150 a week from the Goold and Downer operation.

(Testimony of Everett R. Goold.)

Q. So that you received a total of \$190?

A. \$200. Well, I was raised, after a year with my Dad I was raised to \$50 a week for the Eddy Electrical and Mechanical Company, and I got \$150 from the Goold and Downer operation.

Q. When did the Goold and Downer operation first begin?

A. 1940, I believe, the fall of 1941 or spring of '42.

Q. Yes. And your duties when you first came with your father were superintendent of the electrical sales?

A. That is right.

Q. Is that correct?

A. Yes, appliance.

Q. What kind of sales was that?

A. Appliance, retail appliance sales. Then I had direction of the electricians at that time.

Q. And what work were the electricians doing?

A. Maintenance and repair, new building work.

Q. Knob and tube work in houses?

A. That is right, cottage work, large electrical wiring installations.

Q. By "large" you mean buildings and industrial— [61]

A. (Interposing.) Yes, we had some new buildings. I was just trying to recall. I believe we did a job for the State of California at the State Hospital my first year I was there. In dollar volume—I can't give you the dollar volume on it. It is a matter of record, however. Our books would disclose.

(Testimony of Everett R. Goold.)

Q. Approximately how much of a job was that?

A. I wouldn't even venture a guess, I might be too far off.

Q. Well, as compared with knob and tube work, knob and tube work as I understand it, I would like to ask you if I am correct in my understanding, that that is just simply wiring of residential houses and that sort of work?

A. That is right. Cottage work is knob and tube work.

Q. Then work on buildings, industrial buildings and office buildings and hospitals, if you please, is somewhat more complicated and important, isn't it?

A. That is right.

Q. Now, you think you had about one contract during the time that you were manager?

A. Oh, no! There were several contracts during that time, but I can't give you the definite date. And incidentally, I am not an electrician, but I handled the purchase of the material that was needed, and directed the men to the jobs, and saw that they were supplied with the materials for the job. [62]

Q. I see. Well, then you didn't actually direct the installations, is that right? A. No, sir.

Q. Then when the Goold and Downer job was undertaken in 1941,—when in 1941 did you say?

A. Well, I believe it was in the fall of 1941. I am not positive about that.

Q. When that work was undertaken you re-

(Testimony of Everett R. Goold.)

ceived additional salary for services performed in connection with that operation?

A. Not for the first job that they did. It was in '42 that I started to receive a salary from them.

Q. 1942? A. 1942, that is right.

Q. And that was \$150 a week?

A. \$150 a week, yes.

Q. And what job was that that they were working on at the time?

A. Stockton Ordnance Depot, installation of railroads, and the storm sewers at the Stockton Ordnance Depot, and installation of a sewer system for the Pollock Shipyards.

Mr. Marcussen: Exhibit 4-D, please.

(The Clerk handed the document to Mr. Marcussen.)

Q. (By Mr. Marcussen): I hand you Exhibit 4-D, and ask you to state what work that contract covers? [63]

Mr. Smallpage: To which we except upon the ground the contract itself is the best evidence.

A. Well, that was at the Stockton Motor Depot, at that time called the Fourth Echelon Base Motor Repair Shop.

Q. (By Mr. Marcussen): Yes. Did you do anything in connection with that contract?

A. Nothing.

Q. Now, the work that you performed then in connection with the Downer joint venture, or partnership, on behalf of your father, I presume was

(Testimony of Everett R. Goold.)

performed in pursuance of this contract which is Exhibit 5-E, is that correct? In other words, it was a job——

A. (Interposing.) Well, what job was this? They had, as I recall, they had two jobs.

Q. Well, it was a job that they received after they had executed this document and entered into a general partnership?

A. They have never entered into a general partnership that I know of. There was a joint venture agreement with Downer.

Q. And on this job you testified to, will you state again what were your duties?

Mr. Smallpage: To which we object. Which job do you refer to?

Q. (By Mr. Marcussen): [64] The Downer job that you worked on?

A. Which one? We had numerous.

Q. Any job, all of them?

A. Well, all of them, you say?

Q. For the year 1942? A. '42?

Q. Yes.

A. The Stockton Ordnance Depot Railroad job, and the Pollock Shipyards.

Q. No, I want to know what did you do on those jobs, Mr. Goold?

A. Well, I supervised the installation of railroad at the Stockton Ordnance Depot, and the first job in '41 that went on, storm sewers, were all Downer. He taught me the underground business as far as

(Testimony of Everett R. Goold.)

lines and grades were concerned, and I took over from there.

Q. What do you mean by that, you took over from there?

A. Well, I took over the job and ran it.

Q. Of the underground work?

A. Of the underground work, that is right.

Q. That was in the year 1942? A. '42.

Q. Now, didn't Downer have a superintendent who was doing that work before?

A. He had several of them before I came into the picture. [65]

Q. What happened to them?

A. Well, I think that they were incompetent.

Q. They were dismissed, so far as you know, is that right? A. That is correct.

Q. Now, has your father been a healthy man most of his life prior to 1942, so far as you know?

A. No, he has not.

Q. What has his illness been?

A. He has been subject to attacks of arthritis since he was 31 years old that I know of, but it has gotten progressively worse.

Q. Now, in 1942, I think you say he found it necessary to leave his business for a period of six weeks, part of which he was in the hospital, is that correct? A. That is right.

The Court: I think, gentlemen, we will have to recess at this time.

(Testimony of Everett R. Goold.)

You are not through with this witness, nearly, are you?

Mr. Marcussen: No, I am not. [66]

* * *

Q. How long during the year 1942 did you receive a salary of \$150 a week from the Downer operation?

A. I don't know. That is a matter of record on the books.

Q. Well, what is your best estimate, do you have any estimate?

Mr. Smallpage: To which we object on the ground the books are the best evidence.

The Court: The witness already answered that he doesn't have any recollection.

Q. (By Mr. Marcussen): During the year 1943 what compensation did you—or did you receive any salary at all from the partnership or any of the joint ventures in which it was engaged during the year 1943? A. No.

Q. You didn't? A. No.

Q. Did you have a drawing account?

A. Yes.

Q. How much did you draw?

A. To the best of my recollection, it was \$150 a week from the Goold and Downer operation, and \$50 a week from the R. Goold operation, which was in fact the Eddy Electric and Mechanical Company.

Q. So that you took out a total of \$200 a week?

(Testimony of Everett R. Goold.)

A. I believe that is correct.

Q. And did your father have any salary?

A. No.

Q. Did he have a drawing account?

A. Yes.

Q. What was his drawing account?

A. The same.

Q. \$50 from Eddy Electric?

A. Yes, and \$150 from Goold and Downer.

Q. And at the end of the year were those drawing accounts charged against your share of the profits? A. No.

Q. Were they charged as an expense of the business, do you know? A. No.

Q. In other words, the profit was computed without taking into account this \$200 a week which both of you withdrew?

A. I don't understand that question.

Q. All right. I will ask you, do you recall what the profits were for the year 1943?

A. To the best of my knowledge, the profits—well, the income tax reports will give that evidence, and you have that.

Q. But you don't have any recollection of what it is right now? [73] A. Not exactly, no.

Mr. Marcussen: I would like to ask counsel whether he is prepared to stipulate that the drawings were actually charged against the profits and not as an expense, that is, they were credited against the profits?

(Testimony of Everett R. Goold.)

Mr. Scott: That is a fact, yes.

The Court: All right. So stipulated.

Mr. Marcussen: You so stipulate?

Mr. Scott: Yes.

Q. (By Mr. Marcussen): In the year 1943 what were your duties?

A. My duties were supervision of various railroad and underground projects for the United States Engineers, and——

Q. (Interposing.) Which contract? Identify it, if you can, by——

A. (Interposing.) Well, I have a sheet here, a summary sheet made up by our accountant at our request to arrive at our income tax for the year of 1943, and in which he has summarized these jobs.

Now, for the year 1943,—is that the question, which jobs?

Q. That is the year, yes.

A. We had a job at Lathrop which was an unloading ramp. I had nothing to do with that. We had a job for the California Plumbing, which was an underground job, which was [74] rental of equipment. I had nothing to do with that. We had a job for Pollock-Stockton Shipyards. It was a job which I not only had the supervision of, but I had the installation of, in other words, I dug the ditch and laid the pipe and back-filled it, completed the job myself with the aid of two laborers.

Mr. Smallpage: Just give the dollars and cents volume of these respective jobs so the court will

(Testimony of Everett R. Goold.)

know the size and extent of the work which you did.

The Witness: All right.

Mr. Marcussen: Well, now, I am not interested in that just at the present time.

The Court: All right. Go ahead, Mr. Marcussen.

The Witness: We had a job for Shepherd and Green which was an underground job.

Q. (By Mr. Marcussen): Shepherd and Green?

A. Shepherd and Green, in which my only occupation was to order the material and see that it was supplied for the job.

Teichert and Company, a housing project, in which Mr. Downer started the job, and in the center of the job I took over and completed it.

Q. By that what do you mean?

A. He was called away to another job, and I assumed his responsibilities and completed the job to its conclusion. [75]

Q. Well, what duties did you actually perform?

A. In other words, installed—well, I actually told the men what to do, in other words, to put in the catch basins, how to put them in, how to install them, culverts, and installation of the pipe.

Q. What pipes were these?

A. Storm sewers and sanitary sewers.

Q. At a housing project?

A. At a housing project.

Q. How much time did you spend on that, how many months did that job take?

(Testimony of Everett R. Goold.)

A. I believe I was on that job—well, it is a matter of record, my time spent on the job. I would say that I was on the job over a month.

Q. Yes. During that time did you devote—how much of your time during the course of that?

A. 100 percent of my time.

Q. And how about that Shepherd and Green job in which you ordered material, how long did that take?

A. Oh, it was a short job, it was not over a week's duration.

Q. And how about Pollock Shipyard?

A. That was a three-day operation.

Q. And about California plumbing? You didn't do that?

A. I didn't participate in that. [76]

Q. Now, you did this railroad supervision? That is the first item you mentioned?

A. That is correct.

Q. How long a time did that take?

A. That took sixty days.

Q. And how much of your time during that period?

A. 100 percent of my time during that period.

Q. All right. After the Teichert Housing Job which you listed, do you have any others in the year 1943?

A. Well, you have already taken—we had a job at San Pablo.

Q. What was that?

A. Which was a sanitary sewer project.

(Testimony of Everett R. Goold.)

Q. For what?

A. For the San Pablo Sanitary District.

Q. Is that part of a division, of a municipality, do you know, or what?

A. No, it is a district set up solely for sanitary purposes.

Q. And how long a time did that job cover?

A. Well, it is a matter of record how long these jobs took.

Q. Well, I am asking you for your best estimate.

A. I can't recall exactly.

Q. Your best recollection? [77]

A. Well, 90 days.

Q. What was your function on the job? Supervision? A. Correct.

Q. And did that take 100 percent of your time at the time? A. That is right.

Q. Were there any other jobs in 1943 that you worked on?

A. Yes, at the time we were installing the San Pablo Sanitary District underground job we also installed a railroad spur for Moore and Roberts, at Richmond, and I stated that I spent 100 percent of my time on the Sanitary District, but now this refreshes my memory that I did——

Q. (Interposing.) Both of those jobs?

A. Both of those jobs at the time, they were in the same locality.

Q. That was supervision also?

A. That is right.

Q. Now, how many other jobs were there? Just

(Testimony of Everett R. Goold.)

give me the number of other jobs that you haven't mentioned, in 1943.

A. That I had direct supervision over?

Q. That you worked on.

A. That is right. There were a total of seven jobs.

Q. Seven more jobs?

A. No; there was a total of seven jobs.

Q. Oh, a total of seven. You have mentioned some of [78] them, and there are several more?

A. That is right.

Q. In other words, you were doing the same work. Approximately that work was the same as you did in 1942, I take it?

A. That is right.

Q. By that I don't mean the same jobs.

A. That is right.

Q. But I mean the same general type of work.

A. That is correct.

Q. Now, in 1942, prior to the time that you got in on this supervisory work for Downer,—by that I mean the Downer job?

A. Yes.

Q. Prior to that time you had been receiving \$40 a week as general manager of Eddy Electric, is that correct?

A. That is correct.

Q. In the appliance department?

A. That is correct.

Q. And you devoted your entire time to it at that time, is that correct?

A. That is correct.

Q. Then some time in 1942 you undertook this Downer work, and it continued on into 1943 as you have just described?

A. Yes.

(Testimony of Everett R. Goold.)

Q. Who took over your duties in Eddy Electric?

A. We sold out the appliance business, we went out of the appliance business, and then had just maintenance.

Q. When?

A. That is a matter of record, too. I think it was in the year of '42. Our appliances stopped coming in in the year of '41, and as they were sold out we stopped the appliance business.

Q. I see. Why was it that your salary continued notwithstanding that your duties discontinued?

A. My duties did not discontinue, I went from that, as I told you I was directing the electricians along with my sales managing of the appliances.

Q. I see.

A. And I believe at that time we were building a Jap camp, and I had direct supervision of some 65 or 70 electricians.

Q. This was in 1942?

A. Well, now you have got me. It was '41 or '42, I believe it was.

Mr. Smallpage: Just a moment.

May I interrupt?

The Court: Why?

Mr. Smallpage: To fix the date.

Mr. Marcussen: Very well, I will stipulate to that, your Honor.

What was the date, counsel? [80]

Mr. Smallpage: The Japanese camp was created after the war was declared.

(Testimony of Everett R. Goold.)

A. We carried on—for the year of 1944 we were discontinuing, trying to bring to a close the R. Goold and Son and A. E. Downer operation, and we drifted that to a close during the year of 1944, and in 1945 the operation was solely R. Goold and Son, and we continued in the underground and railroad business, and I handled all bidding and supervision of the work on jobs that we did in that year.

Q. Now, during the year 1942 and 1943 and 1944, you have described your duties as being that of supervision of these various jobs in this type of work. In connection with what contract, or shall I say what joint venture, was that work performed?

A. R. Goold and A. E. Downer.

Q. And A. E. Downer.

A. And, as I said before, we were still in the electrical maintenance and repair business, and I handled that.

Q. Yes. Now, was there any work in any of those years [83] that you performed—I hand you Exhibit 1-A in this proceeding and call your attention to the fact that that is what has been introduced as the Bill of Sale here, and I call your attention to Item B appearing on that, and ask you whether the Downer operation is that particular operation that you refer to?

A. What particular operation are you referring to?

Q. Well, you stated that you performed certain

(Testimony of Everett R. Goold.)

services of supervision on certain construction and underground work for Downer?

A. For R. Goold and A. E. Downer.

Q. Yes. Now, is that the particular job?

A. That is not a particular job, that is an account or—well, how shall I stated that?—the net worth of the R. Goold and A. E. Downer venture at the time I purchased a half interest in the business.

Q. I see. Well, that is the same Downer operation, then, for which you performed certain services in the years to which you have just testified, is that correct? A. That is correct.

Q. Now, during any of these years, did you perform any services in connection with the joint venture, the R. Goold and F. R. Zinck joint venture listed in this Exhibit as Item C?

A. In 1942?

Q. Any of these years?

A. Any of these years? [84]

Q. Yes. A. Yes, I did.

Q. What years?

A. Well, there is a question now as to what year the Jap camp work was performed, that was an F. R. Zinck operation, and I worked on that, and I worked on the storm sewer disposal system of F. R. Zinck, the contract was handled in F. R. Zinck's name at the Stockton Ordnance Depot.

Q. Yes. What year was that?

A. Well, those jobs are a matter of record.

Q. You don't recall what year?

(Testimony of Everett R. Goold.)

A. I don't recall what year.

Q. What were your duties on that?

A. In the Jap camp, as I told you, I had direct supervision of all the electricians, and I also aided in acquiring materials and men for that particular job.

Q. Well, now, did Eddy Electric Company have a subcontract from this joint venturer for the installation of an electrical system?

A. That is correct.

Q. And that is the work you did, is it?

A. No. I told you I also aided in getting material for the F. R. Zinck Prime contract in the form of materials and men.

Q. Which one? [85] A. The Jap camp.

Q. The Jap camp? A. That is right.

Q. Did you get any materials for the drainage job? A. Yes.

Q. Now, how much time did you spend on that?

A. I can't state.

Q. Do you have any recollection at all?

A. Well, we were pretty busy during this period, and it is pretty hard to tell you just how much time I allocated to each one of these ventures.

Q. Yes. Well, was it a week, or was it a month?

A. Well, it was more than a week, I mean in a period of time, why, I would say I spent probably five percent of my time.

Q. Over what period of time?

(Testimony of Everett R. Goold.)

A. Well, for the jobs mentioned, on those jobs, whatever the period of those jobs was.

Q. Which jobs?

A. The Jap camp and the storm drainage system.

Q. I see. Now I refer you to Item D on this Bill of Sale which is referred to as the Linner Joint Venture, and ask you if you performed any services in connection with that?

A. There were no services performed by either R. Goold or myself. [86]

Q. Yes. And I will ask you whether or not you performed any services in connection with Items E and F which I understand is the C. L. Wold venture?

A. Only to the extent that we did have a subcontract on the sanitary system in that operation, and I had no direct supervision. It was merely a matter of aiding and abetting in getting men and material for the job.

Q. I see. And you said who had the subcontract on that? A. R. Goold and A. E. Downer.

Q. In other words, that is this first joint venture had a subcontract from this other joint venture?

A. That is correct.

Q. Now, in 1946 what were your duties?

A. We continued in the same line of business, R. Goold and Son, as a partnership, continued in the underground and railroad business and electrical work with the joint ventures of C. E. Kennedy as contractor.

(Testimony of Everett R. Goold.)

Q. In 1947? A. Continued.

Q. Now, during the year 1943, what men did you have working under you?

Mr. Smallpage: To which we except, and ask counsel to specify whether he means the number of men, or an enumeration of the payrolls?

The Court: You mean the names of the men, or how [87] many, or——

Mr. Marcussen: (Interposing.) All right. I will strike the question and start over again.

Q. (By Mr. Marcussen): How many men did you have working under you during the year 1943?

A. It varied from as low as ten men up to three hundred men.

Q. What type of work were they doing?

A. Underground work, and railroad work, and electrical work.

Q. Laboring work?

A. The installation of railroad tracks, and the installation of storm sewers and sanitary sewers and electrical work.

Q. Yes, but these men that you referred to, what work were they doing? Actually, were they laborers?

A. Actually, as the union classified them, some were pipe layers, some were track laborers, some were engineers, and of course, common laborer.

Q. Now, what engineers did you have working for you? A. Operating engineers.

Q. By that you mean of the A.F.L.?

(Testimony of Everett R. Goold.)

A. Equipment operating engineers, that is what they are called.

Q. Yes, excavators? [88]

A. Excavators and shovel operators, motor patrol operators, anything in the heavy equipment line were operated by operating engineers.

Q. You don't refer to civil or mechanical engineers, do you? A. No.

Q. By the way, did you finish your work at the College of the Pacific and take a degree there?

A. I received a Bachelor of Arts Degree.

Q. Bachelor of Arts Degree?

A. That is right.

Q. Now, did Mr. Downer work for you during the year 1943, or under your supervision?

A. We were joint venturers.

Q. Did he work under you?

A. We worked together.

Q. Didn't you testify on direct yesterday that Mr. Downer and another individual, who received substantial salaries, worked under your supervision?

Mr. Smallpage: To which we object on the ground there are two Downers.

Kindly specify which one you mean, counsel.

Mr. Marcussen: The witness is here testifying. I don't have that information.

The Court: Go ahead. Objection overruled. [89]

A. Mr. L. Downer was directly a joint venturer on an equal basis.

(Testimony of Everett R. Goold.)

Q. (By Mr. Marcussen): Equal basis with whom?

A. With R. Goold and Son in the joint venture of R. Goold and Son, and A. E. Downer.

Q. Well, was it your understanding that A. E. Downer—you said that it was L. Downer, is that correct?

A. That is correct.

Q. Did he have the major interest, and was he in control of A. E. Downer?

A. He was a joint venturer with R. Goold.

Q. Who was A. E. Downer?

A. A. E. Downer was working for John Pistano when R. Goold met him, and then they worked together as joint venturers in the underground business.

Q. Well, who was he to L. Downer?

A. L. Downer and A. E. Downer are one and the same person.

Q. That is what I am getting at.

Now, I think you stated that R. Goold and Son were in a joint venture with A. E. Downer. Wasn't it the joint venture as is shown here by Exhibit 4-D? Wasn't it between Downer and R. Goold, your father?

A. Previous to 1943, yes, but after 1943 the R. Goold [90] and A. E. Downer operation was, in fact, R. Goold and Son, and A. E. Downer.

Q. Simply by reason of the fact that you came into the business with your father?

A. Correct.

(Testimony of Everett R. Goold.)

Q. Now, who was the other man that you testified to yesterday that was under your supervision, receiving a salary of \$7500? No, that was Mr. Downer, wasn't it?

Was that Mr. Downer?

A. Mr. Downer received that amount of money as a drawing account in the joint venture of R. Goold and A. E. Downer.

Q. In other words, that wasn't his salary at all so far as you knew, was it? A. No.

Q. That was his drawing account in the joint venture? A. That is correct.

Q. Now, you said that C. E. Kennedy received \$12,000? A. That is correct.

Q. And was that his drawing account?

A. That is correct. No, no; that was his salary.

Q. That was his salary?

A. That was his salary.

Q. And from whom did he receive that salary?

A. From the joint venture of Wold, Midbust and Anderson and Ringrose and C. E. Kennedy. [91]

Q. And did you testify that he was working under your supervision?

A. I do not believe that I testified that he was working under my supervision. If I did, I was incorrect in the statement.

Q. Yes. This railroad work that you referred to, who drew the plans for that?

A. The United States Engineers.

Q. And who set out the stakes?

(Testimony of Everett R. Goold.)

A. The United States Engineers.

Q. On all of these jobs that you worked for for Downer, did the United States Engineers participate and oversee the jobs?

A. I was not working for Downer in the year of 1943. I was working as a joint venturer with Downer in the year of 1943.

Q. I am talking about all these Downer jobs. These were Downer jobs that you did the supervision on, were they not?

A. They were R. Goold and A. E. Downer.

Q. I understand that. I just wanted to be sure we understood each other.

When I refer to the Downer jobs, I mean the work that you and your father and Downer were doing pursuant to a joint venture or partnership agreement, that R. Goold had in [92] the beginning, and later R. Goold and Son had with Mr. Downer. Now, when I refer to the Downer work, that is what I am referring to. A. I see.

Q. Now, all of your work, I think most of your work, I think you testified, was performed on the Downer contracts and under the Downer job, is that correct? A. Most of it.

Q. Yes. Now, on those jobs were there United States Engineers present supervising the laying out of the stakes and surveying? A. Correct.

Q. And all that sort of thing?

A. That is correct.

(Testimony of Everett R. Goold.)

Q. And didn't they direct you in the operation?

A. Absolutely not.

Q. Well, you just simply followed out the stakes and the technical matters that they had laid out, is that correct?

A. We had a set of plans, and the Engineers laid out the stakes, and then, our plans, we installed the railroad trackage and the underground work.

Q. Now, what plans are these? Your plans you referred to?

A. The plans upon which we figure in the jobs which were put out by the United States Engineers.

Q. Yes. You didn't draft these plans, did you?

A. Absolutely not.

Q. And the United States Engineers did?

A. That is correct; that is correct.

Q. Then your job in this thing was supervising the men in the actual performance of the physical work, isn't that correct?

A. Correct; that is correct.

Q. And wasn't Mr. Downer on those jobs too?

A. Mr. Downer was never on a railroad job.

Q. I see. He was, however, on the underground work?

A. He was on the underground work. He broke me into the underground work in '42.

Q. Yes. You worked under his tutelage then during the year '42? A. To start.

Q. Now, what about the year '43?

A. '43 I handled the jobs myself.

(Testimony of Everett R. Goold.)

Q. Was he there at all?

A. At times. Other times he was not present.

Q. Now, what was your total income in the year 1942?

A. It is a matter of record on the income tax report. You have my reports here, I believe.

Mr. Marcussen: I don't think we do.

Counsel, do you have them? [94]

Mr. Scott: The year '43?

Mr. Marcussen: 1942 Income Tax Return.

Mr. Scott: I have a file copy.

Mr. Marcussen: Yes. May I see that?

Mr. Scott: No, I am afraid I spoke without—let me see (Examining documents). No, I don't have it. I am sorry.

Q. (By Mr. Marcussen): Do you have any idea at all what you earned, total earnings were in 1942?

A. No, I don't recall.

Q. Now, in 1942 did you have any income other than from Eddy Electric Company and your income from the Downer operation? A. 1942?

Q. Yes. A. None that I recall.

Q. Yes. And in 1942 what was the extent of your property holdings entirely apart from—well, as of December 31, 1942, what was your net worth?

A. I don't believe I prepared a statement for the year of 1942.

Q. I beg your pardon?

A. Financial statement for the year of 1942.

Q. What property did you own?

A. My home—

(Testimony of Everett R. Goold.)

Mr. Smallpage: (Interposing.) To which we except. [95]

The Court: Objection overruled.

What did you own?

The Witness: A home.

Q. (By Mr. Marcussen): A home?

A. Yes, sir.

Q. Did you own it fully without a mortgage on it?

A. '42? That I would have to recall. I would have to refer to my books to see whether it was paid for at that time.

Q. When did you buy your home?

A. 1940, I believe.

Q. What was the contract price?

A. Near \$7,000.

Q. And can you recall now, was it under a mortgage? A. Yes, it was.

Q. How much of a down payment did you make in 1940?

A. Four or five thousand dollars at the time.

Q. You don't recall when the mortgage was paid off, or the balance? A. No, I don't.

Q. What other property did you have at the end of 1942? A. An automobile.

Q. Did you own that completely?

A. Yes.

Q. What kind of an automobile? [96]

A. 1940 Chevrolet Sedan.

Q. What else did you own?

(Testimony of Everett R. Goold.)

A. Home furnishings.

Q. Is that all?

A. Some stock in the Union Oil Company.

Q. How much?

A. It didn't amount to much. I think four shares in the Union Oil Company.

Q. Did you get that as a result of an employee participation plan? A. Correct.

Q. Is that all the property you owned at the end of 1942, so far as you can recall?

A. So far as I can recall.

Q. During the year 1942 do you recall whether or not you sustained any losses of any kind that you might have reported on your income tax return?

A. Well, I believe there was a theft of a radio and some clothes from our home at the time we were moving in.

Q. Did you claim that on your income tax return? A. I don't recall.

Q. What was the total loss?

The Court: How is that material?

Mr. Smallpage: It is immaterial.

Mr. Marcussen: I am attempting to ascertain, if your [97] Honor please, we do have information in the record, and we are prepared to introduce the return for 1943, which contains a computation on 1942, and it shows here, for example, I think a total, the total tax paid in 1942 of some \$47.00. I am just putting into the record——

The Court (Interposing): Well, you are just

(Testimony of Everett R. Goold.)

interested in the earnings and net worth of this witness, aren't you?

Mr. Marcussen: Yes. I merely want to establish what was his total income in 1942. He says he has no recollection.

The Court: Well, you have the return, haven't you?

Mr. Marcussen: I have the return of 1943, and on it a computation of the tax, that he showed a tax of \$47.00 that he paid for 1942, and this information just lays the foundation to show what the fact was for '42.

The Court: Well, I think that we don't have to go thoroughly into it. I think even that would be enough for your purposes.

Mr. Marcussen: Very well, your Honor. I will discontinue that line of questioning.

Q. (By Mr. Marcussen): Now I hand you this document and ask you to state what that is.

Mr. Smallpage: May I see it, counsel, please?

Mr. Marcussen: His 1943 income tax return.

Mr. Smallpage: I haven't seen it. [98]

A. That is my 1943 income tax return.

Q. (By Mr. Marcussen): Is that your signature here at the foot of the first page?

A. Yes.

Mr. Marcussen: I offer that in evidence, if your Honor please.

The Court: Accepted in evidence.

Mr. Marcussen: As Respondent's—

(Testimony of Everett R. Goold.)

The Clerk: Exhibit X.

(The 1943 Income Tax Return referred to was marked and received in evidence as Respondent's Exhibit No. X.)

Mr. Marcussen: And I ask for leave to submit a copy.

The Court: Leave granted.

Mr. Smallpage: Will you furnish us a copy?

Mr. Marcussen: Don't you have a copy??

Mr. Smallpage: No, we have none.

Mr. Marcussen: You don't have a copy here?

Mr. Smallpage: I haven't got a copy.

Q. (By Mr. Marcussen): Do you have a copy of that return, Mr. Goold, the year 1934 income tax return?

A. I presume that our accountant has it in his hands. I wouldn't know. Our papers have been disturbed so I don't [99] know whether they are in our office, or the Internal Revenue Department's office, or the Attorney's office.

Mr. Marcussen: Very well.

Now, counsel, if you tell me after the trial of this case that you don't have a copy of this return, I think you should make arrangements now to withdraw it and have a copy made. I would like to have a copy made for you, but we don't have facilities for providing copies beforehand. I regret it very much. I will certainly stipulate that you may withdraw it. I will provide you with the copy so that you can have one made from that.

(Testimony of Everett R. Goold.)

Mr. Smallpage: Very well.

Q. (By Mr. Marcussen): Now I want to take you back, Mr. Goold, to conversations that you had with your father in 1942 about your coming into the business.

Now will you please state to the Court the approximate time when those conversations first took place?

A. In 1940 my father bought out his partner, I believe I stated that yesterday. At that time he gave me the opportunity to come into business with him.

Q. What did he say to you?

A. He gave me the opportunity to purchase a half interest in the business if I could prove that I was worth the money, worth the—that I had the value to him as a partner. [100]

Q. You were working at the time with Union Oil Company?

A. That is correct.

Q. And on your oath I want you to recollect whether or not he told you that he would let you purchase an interest in it, or whether or not he would eventually give you an interest in that business, on your oath to this Court?

A. Never at any time did he say he would give me an interest in the business.

Q. Never at any time?

A. Not to the best of my recollection.

Q. And at that time in 1940 did you discuss with him on what basis he proposed that you might purchase an interest?

A. I didn't. It didn't enter my mind. I was

(Testimony of Everett R. Goold.)

glad for the opportunity to show whether I could be of enough value to him to become a part owner in the business.

Q. Yes. Now, that was upon the occasion of your entry into the business as an employee in 1940?

A. That is correct.

Q. Now, when was your next conversation with your father about purchasing an interest?

A. Well, it was the year 1942 we discussed it. Well, when he took sick is when we actually began to discuss this.

Q. Can you place that? A. No, I can't.

Q. As to month? [101] A. I can't.

Q. You don't know the month?

A. No, I don't.

Q. You don't know whether it would be in the first half or the last half of 1942?

A. No, I don't, but I imagine that we could produce hospital bills and show what the exact dates were.

Q. Well, I am not interested in exact dates, but you don't know whether it was January or December, do you?

A. No, I don't. That was six years ago, and it is pretty hard to remember things for six years.

Q. How many conversations did you have in 1942, if you remember?

A. Oh, I don't know.

Q. Did you have several? A. Yes.

Q. And on the first of those conversations, what did your father say to you?

(Testimony of Everett R. Goold.)

A. I don't remember.

Q. What did you say to him?

A. I don't remember.

Q. Well, in the next conversation that you had with him, what did your father say to you, and what did you say to him?

A. You want exact words, or generalities?

Q. No, if you know the exact words? [102]

A. I don't know the exact words.

Q. What was the substance?

A. The substance of the conversation was that it was time—he said that I had proved my worth in the business, and that he was discussing it with the attorney and our accountants to see by what method this business could be purchased.

Q. Now, who was the attorney and who was the accountant?

A. Mr. Smallpage and Mr. Scott.

Q. And did he tell you what Mr. Smallpage and Mr. Scott had told him at all about how that might be done?

A. No, I don't believe we discussed that. The next thing I knew I was working, busy, busy with the business, and he had the papers, and he said, "Here is the setup, they have got the papers. If you like the looks of it, fine," if the note was all right, why, it was all right for me to sign.

Q. Now, you don't recall when that was? Well, when you signed, that was on January 3, 1943, is that correct?

(Testimony of Everett R. Goold.)

A. I believe that is correct. That is evidenced on the face of the note, I believe.

Q. And what did you say to your father at the time? A. Well——

Q. Are you referring to some notes now that you have?

A. No, I haven't. I am just making some notes as you talk. Is that all right?

Q. That is quite all right. [103]

A. At the time he told me that he couldn't give me a half interest in the business because it would be unfair to my sister.

Q. Yes.

A. And that is why the promissory note was executed, and it was to be taken from my estate in the event of his death, in the event of his death I would have to pay back, I would have to pay back all the gift portion of that that had been assigned on the back of the note.

Q. He said what?

A. He said that any time—it would not be fair to my sister, he put this down advisedly, it would not be fair to my sister for him to give me a portion of the business, that I must purchase it.

Q. And did you go over with him the figures on the Bill of Sale here?

A. I didn't pay much attention to them, to be honest with you.

Q. You didn't pay any attention to these?

A. I looked at them, but after all, he had been

(Testimony of Everett R. Goold.)

in business a good many years, and it was a sound business deal. I took his advice when he said it was all right.

Q. You signed upon his suggestion?

A. No, I read the thing through and saw, as far as I could see it was fair to me. [104] ,

Q. I thought you said you didn't give it any consideration?

A. Well I didn't give it any consideration. After all, if a man had been in business for thirty years, and I had been under his tutelage for some two and a half years, then—for two years, I took his advice that it was a good, sound business deal.

Q. You didn't have any conversation with him at all as to the valuations?

A. Well, he said these were taken out of the books, these were the figures out of the books as far as he could ascertain, and he did mention that on the Marysville job there was an anticipated profit.

Q. Yes. And I think you said something yesterday, that you had a conversation with him at the time, that an adjustment would be made in the event that there were any losses on that?

A. That is right.

Q. And what did he say about the prospect that there would be any losses?

A. He didn't think there would be any losses on that job.

Q. He didn't think there would be any?

A. No.

(Testimony of Everett R. Goold.)

Q. Is that all you can recall of your conversation with your father at the time?

A. Well, yes, I believe that is all I can recall at the [105] present time.

Q. He didn't say anything, did he, about any other adjustments that might be made on that figure?

A. No, not that I know of.

Q. Yes. Now, you stated that at that time, on January 2, 1943, that he said that it would be necessary for you to make up any gifts that he would make on his business to your sister, is that correct?

A. No, no, that is not correct.

Q. Well, what did you say about that conversation on January 2?

A. In that conversation he was trying to tie in—he told me that he couldn't give me an interest in the business, he would have to sell it to me, and that it would not be fair to my sister if he was to give it to me, and so he made me sign the promissory note for the interest in the business.

Q. And did he have any conversations with you thereafter about any gifts that he would be making to you?

A. Only after he had made the gift.

Q. Only after he had made the gift?

A. That is right, and he told me at that time that those gifts that he made, in the event of his death his will is set up as such that any gifts that

(Testimony of Everett R. Goold.)

he had made on this note would be adjusted, so that my sister and I would share and share alike. [106]

Q. When was this that your father first had a conversation with Mr. Scott and Mr. Smallpage about this matter?

Mr. Smallpage: To which we object upon the ground it calls for a conclusion of the witness, and a matter not within his direct knowledge.

The Court: Objection overruled.

The Witness: State the question again, please.

(The pending question was read by the Reporter, as follows:

“Question: When was this that your father first had a conversation with Mr. Scott and Mr. Smallpage about this matter?”)

A. Well, I don't know.

Q. (By Mr. Marcussen): Was it at or about the time of his illness?

A. I can't recall that.

Q. Well, didn't you state a moment ago that you first had serious conversations with your father about actual proposals for a transfer of a half interest to you after he became ill?

A. That is correct.

Q. And did he say he would talk to Mr. Scott and Mr. Smallpage?

A. He didn't say anything about talking to them.

Q. What did you say a moment ago when you

(Testimony of Everett R. Goold.)

mentioned that [107] conversation he had with Mr. Scott and Mr. Smallpage?

A. When he presented the bill to me he said that Mr. Scott and Mr. Smallpage had drawn up this bill of sale.

Q. Now, then, when you examined this, didn't you think that that was a rather harsh terms for you to undertake, to take a half interest in this business? A. No, I didn't.

Q. You didn't think it was? A. No.

Q. You thought it was perfectly fair?

A. That is right. After all, the accountants and the attorneys had drawn it up, and I thought that it was a fair proposition.

Q. As a matter of fact, it is very fair, isn't it, Mr. Goold? A. I don't know.

Q. Well, do you know whether it is fair or not? Can you get \$100,000 any place without paying interest for it? Do you know? A. No.

Q. Do you know any place besides your father where you could get that? A. No.

Q. You don't know of any place where anybody would give you \$100,000 and permit you to pay for it at the rate of 25 [108] per cent of the profits you would get on that \$100,000? A. No.

Q. You don't know of any place where that could be done, do you? A. No.

Q. Well, you must have come to the conclusion that it was more than fair, didn't you?

A. Why, certainly!

(Testimony of Everett R. Goold.)

Q. Now I hand you Respondent's Exhibit X, which is your 1943 income tax return, and call your attention to the fact that on line 9 here there is an item of \$30,258.57. A. Yes, sir.

Q. Which you appear to have reported as your one-half of the total income which you received from this business, and ask you whether you can recall now what the total amount of the income of R. Goold and Son was for 1943?

A. It should have been in the neighborhood of 60,000 for the total income.

Q. That is 60,000 for your share?

A. No.

Q. \$30,000 shown on your wife's return, is that correct?

A. Well, I don't know whether that is correct or not. Where is my wife's return?

Q. Well, it is a stipulated fact. [109]

A. Oh!

Q. That you took half of the income and reported half of the income for your wife, so that the total share, your total share covering your wife and yourself as you reported it, would be some \$60,000.

A. I see.

Q. And you had a half interest in the business?

A. Correct.

Q. So that the total profits would be \$120,000, wouldn't they? A. That is correct.

Q. So the total profits that you yourself made under the community property laws, and which were subject to your control, were \$60,000, wasn't it?

(Testimony of Everett R. Goold.)

A. Yes.

Q. Now, what attempt did you make to make any payments on that note out of those profits?

A. None.

Q. You didn't do anything, and can you offer any explanation as to why none was made?

A. Very definitely.

Q. What was the reason?

A. Well, the income return was made up in March of '44, and in September of '43 we were under renegotiation for all War contracts, and under advice of counsel, and for that reason [110] we made no payments on the note.

Q. Did you talk that over with counsel?

A. Yes, sir.

Q. You, yourself, or did your father?

A. Oh, Lord, I don't know.

Q. You don't know? A. No, I don't.

Q. Do you recall having a conversation with your father about whether or not you should make any payments?

A. Well, we surely must have discussed it, or a payment would have been made, and I presume the reason for the payment not being made was that we were under renegotiation, and Mr. Smallpage was handling the renegotiation matters.

Q. On what item were you under renegotiation?

A. All War contracts were under renegotiation.

Q. When was all this renegotiation completed, do you recall?

(Testimony of Everett R. Goold.)

A. It was in the late spring or early summer of '43 or '44. '44, I believe.

Q. Yes. And was any attempt made at that time to make any adjustment on this note for the profits that you had received from the business in the preceding years? A. No, sir.

Q. And why was that?

A. Well, for the reason stated, we were in an unstable [111] situation, we didn't have a definite record back from the renegotiation Board until late in the summer, or the early summer, I don't know the exact dates.

Is that a matter of record? Do you have that? Do we have that on record here?

Q. I am just asking you. After all the renegotiation matter had been settled, Mr. Goold, why was no attempt made to pay the proportion of the profits that you undertook to pay on this note from the profits of the preceding years?

A. Well, I stated that we were under renegotiation, and after that time was cleared, it was a short time after that we were under scrutiny of the Internal Revenue Department, and the thing was continually in a turmoil, and on advice of counsel we did nothing about payments on the note.

Q. Did nothing about payments on the note at all? A. No.

Q. Did counsel tell you that? A. No.

Q. Did you have a conversation with your father about it? A. We discussed that.

(Testimony of Everett R. Goold.)

Q. And it was he that had the dealings with counsel, is that correct?

A. Well, we both had dealings with counsel at various times.

Q. Yes. Did your father have any conversation with you [112] as to about what he proposed to do pending the outcome of the investigation by the Bureau of Internal Revenue?

A. No, we were under advice of counsel.

Q. He just said, so far as you know, "Don't do anything on this thing, the thing is subject to the scrutiny of the Bureau of Internal Revenue," is that correct?

A. Yes, sir, or words to that effect.

Q. Yes. I think you testified yesterday to a figure of six or seven million as the gross value of the business you were doing. Do you recall what year that was for?

A. That was for the total, I believe, that was for the total War operation, wasn't it?

Q. I don't know. It was your testimony, Mr. Goold.

A. Well, I don't recall either. If it is a matter of record we could find it.

Q. Well, what is the fact about it?

A. Well, as far as I know, the year of '43, '42 and '43 and '44, it was in the neighborhood of six and seven million dollars worth of business we did under the R. Goold and Son and joint ventures.

Q. All of the joint ventures are included?

(Testimony of Everett R. Goold.)

A. That is right.

Q. Now, what types of contract were those?

A. War contracts.

Q. Yes. What arrangements were made for compensation to [113] the contractors? Was it on a cost-plus basis?

A. We had no cost-plus work.

Q. No cost-plus work?

A. I believe that there is only one job that we did on a—No, it was not a cost-plus basis either. I believe we had no cost-plus work, to my knowledge. No job that I worked on, at any rate, did we have cost-plus work.

Q. Was it fixed fee?

A. No, most of this was contracted for on the basis of competitive bids.

Q. Yes. And who had these contracts? The other parties that were the joint venturers with your father?

A. R. Goold and Son, and A. E. Downer and other joint venturers.

Q. Well, I am asking you now on the joint ventures that your father and you had with these various other parties? A. Yes.

Q. Whether or not it was your side of the joint venture or the other side of the joint ventures that got the contracts from the government?

A. Well, R. Goold and E. R. Goold figured most of these railroad and underground jobs, in their office, and prepared the bids.

(Testimony of Everett R. Goold.)

Q. Will you answer the question, Mr. Goold? Who got the contracts? [114]

A. R. Goold and A. E. Downer and C. E. Kennedy and R. E. Goold.

Q. Now, isn't it a fact that it was Mr. Downer and Mr. Zinck and the other joint venturers who got the contracts and came to your father with the contracts and said, "Here, will you go in with us on these contracts?"

A. No.

Q. What contracts do you know of that your father, or you and your father, actually got?

A. Well, the——

Mr. Smallpage: Just a minute.

I will ask the Court to have counsel explain the word "got."

Do you mean by that, counsel, negotiated with the Government, competitive bids?

Mr. Marcussen: Exactly.

Mr. Smallpage: O. K.

Q. (By Mr. Marcussen): And with the contracting parties?

A. And with the contracting parties? The year of 1943 the Lathrop Unloading ramp, the Pollock-Stockton Shipyards, Shepherd and Green, Oscar H. Vetter, which was a Happy Camp job, which I had nothing to do with; the Capital Construction Company, Caston and Ball, WP Classification yard. We classified that, they were the prime contractors in the WP Classification [115] yard. The crane spur track at the Stockton Ordnance Depot.

(Testimony of Everett R. Goold.)

Q. And who signed that contract?

Mr. Smallpage: To which we object on the ground that the contracts themselves are the best evidence.

The Court: Is the contract in?

Mr. Marcussen: No, it is not, your Honor.

The Court: If the witness knows, he may answer.

A. I don't know.

Q. (By Mr. Marcussen): Did you ever sign a contract with the government, your own name, on behalf of R. Goold and Son, or yourself, or anybody? A. Yes, I have.

Q. You actually signed a contract?

A. Yes, I have.

Q. And entered into a contract, you yourself personally?

A. Not myself personally, but for the joint venturers. With the joint venturers I have signed contracts.

Q. What name did you put down?

A. E. R. Goold.

Q. Now, then, I think you testified that with respect to the Marysville contract, which was part of the Wold joint venture—— A. Yes.

Q. That an adjustment was made to take into account the [116] loss, or not the loss but the reduction in the anticipated profit; is that correct?

The Witness: Would you state that again, please?

(Testimony of Everett R. Goold.)

Mr. Marcussen: Would you read the question, please?

(The pending question was read by the Reporter, as follows:

“Question: That an adjustment was made to take into account the loss, or not the loss but the reduction in the anticipated profit; is that correct?”)

A. Yes.

Q. (By Mr. Marcussen): What was the amount of that item, do you recall? A. No, I don't.

Q. I call your attention to the fact that on Exhibit 3-C, which is the back of a note containing endorsements for gifts and payments and other adjustments,— A. Yes.

Q. That there was first an item of \$50,000 entered here as an adjustment under the date of “12/31/43,” and it is under the heading of “Credit by error made in computation of value of interest sold,” and that the item appears there as \$50,000, and that that is stricken out, and that underneath it is placed the item, “\$29,259.”

How do you explain the \$50,000 adjustment?

A. I don't. That was done by counsel. [117]

Q. It was done by counsel. Did you have any conversation with your father about it?

A. I don't recall any.

Q. You don't recall? A. No.

Q. You don't have any idea what that \$50,000 is about? Bear in mind, now, Mr. Goold, that this

(Testimony of Everett R. Goold.)

is your note, one hundred thousand dollar note, and there appears on back of it an endorsement of \$50,000, and you state to the Court that you don't know what it is about?

Mr. Smallpage: Just a minute! To which we object because the note shows that that \$50,000 was scratched out.

Mr. Marcussen: I object to counsel informing the witness, who is answering the question.

Mr. Smallpage: Well, I object to the question because——

The Court: Objection overruled.

Go ahead. Answer the question.

Mr. Smallpage: Let us see the note, please.

The Witness: Now, what is the question?

(The pending question was read by the Reporter, as follows:

“Question: You don't have any idea what that \$50,000 is about? Bear in mind, now, Mr. Goold, that this is your note, one hundred thousand dollar note, and there appears on back of it an endorsement of \$50,000, and you state to the Court that [118] you don't know what it is about?”)

A. No.

Mr. Smallpage: To which we take an exception. It does not bear an endorsement of \$50,000.

The Court: The witness answered he doesn't know.

(Testimony of Everett R. Goold.)

Q. (By Mr. Marcussen): Do you know what the twenty-nine thousand dollar figure is for?

A. There was some discussion on that, and I believe that was to correct the anticipated profits in the Marysville operation.

Q. And at the end of 1943 do you know whether the profits were known of the Marysville operation at that time?

A. At the end of '43?

Q. Yes.

A. I don't know.

* * *

C. E. KENNEDY

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Smallpage:

Q. Now, Mr. Kennedy, did you have occasion to have any conversation with Mr. Rolly Goold, the father, during the year 1943 with respect to the son's acquiring an interest in his business?

Mr. Marcussen: Object to the question, if your Honor please, immaterial in this case what conversation he had with the father.

The Court: Overruled.

A. Well, I discussed with him from, well, even prior to '43 when he contemplated taking his son in partnership.

Q. (By Mr. Smallpage): Just give us the sub-

(Testimony of C. E. Kennedy.)

stance of the conversations which you had with him.

Mr. Marcussen: Same objection, if your Honor please. The father has not even been called to testify as to what those conversations were. The father is the best person to call to state what he said to anybody. It is hearsay in any event, if your Honor please. [124]

The Court: Objection overruled. Answer the question.

The Witness: You want——?

The Court: Just in general, what did he say?

Q. (By Mr. Smallpage): Just in general?

A. In general he told me in '42 that he contemplated taking his son in business with him.

The Court: Any other questions?

The Witness: And when he did take him in business with him, he told me the basis on which he took him in the business, which was that he would take—I remember the exact wording of it—he said he was going to take a one hundred thousand dollar non-interest bearing note for a half interest in the partnership. [125]

* * *

GEORGE ROLLIN GOOLD

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name and address.

(Testimony of George Rollin Goold.)

The Witness: George Rollin Goold, 1651 West Flora Street, Stockton, California.

Q. (By Mr. Smallpage): How old are you, Mr. Goold? A. 61.

Q. How many children have you?

A. Two.

Q. What are their names?

A. Lela and Everett.

Q. What is Lela's last name?

A. Lela McQuilken.

Q. What business are you engaged in at the present time? A. Contracting.

Q. What type of contracting?

A. Electrical and heavy construction, railroad work, sewers and water.

Q. Are you at the present time engaged in any type of that business? A. Very actively.

Q. What particular contract?

A. At the present time we have a contract with the East Bay Municipal Utility District for installing about 25,000 feet of pipe in the Orinda District. That job is under progress now, about half completed. [130]

Q. Now, during the year 1940, were you engaged in the business of the Eddy Electric and Mechanical Company? A. 1942? Yes, sir.

Q. Whose business was that?

A. At the start of 1940 it was a partnership, owned by E. W. Suplick and myself.

Q. And when did you buy him out?

(Testimony of George Rollin Goold.)

A. In May, I think it was, in the month of May of 1940, May or June.

Q. And thereafter did you conduct that business as a sole proprietorship? A. Yes, sir.

Q. In 1941, was there a change in the type of business which you conducted?

A. 1941 was the start of the war effort.

Q. Yes. Well, prior to the start of the war effort, what was the type of business that the Eddy Electric and Mechanical Company operated?

A. Practically the same thing. In 1932, ten years prior to that, Eddy Electric and Mechanical Company was engaged in water work, sewer work, construction of railroads on the Port of Stockton. In 1939, Eddy Electric and Mechanical Company as a partnership, constructed a farm labor camp at Twin Falls, Idaho, for a quarter of a million dollars. The contract was carried on under the name of R. Goold, but was in [131] fact a partnership consisting of R. Goold and E. W. Suplick as one partner, and J. C. McIntosh as the other partner.

Q. During the year 1940, did your son, Everett Goold, come to work for you?

A. Immediately on the buying out of this partnership, I offered my son an opportunity to come to work for me in 1940, in either May or June of 1940. I don't remember the exact month.

Q. Did you have any conversation with him at that time with respect to his ultimately acquiring an interest in your business?

(Testimony of George Rollin Goold.)

A. Very definitely.

Q. What did you say to him, and what did he say to you at that time?

A. At that particular time he was an employee of the Union Oil Company, had been with them, I think, for four or five years, was a salesman, had a pretty good job. I brought him over and told him, "Now I have finally got complete possession of this place, and if you want to come over here and go to work for me for a period of time, until I determine what your capabilities are, and how you take hold, ultimately I would like to have you go in as a partner," a conversation which had been previously discussed with his mother and I many times. It was always my desire to have him in partnership when I got the deck cleared, when I could. [132]

Q. Did he continue working with you up to January, 1943, as an employee?

A. He was an employee up to January the 1st, 1943, yes, sir.

Q. Now, prior to January 1943, did you have a conversation with him with respect to his acquiring an interest in your business?

A. Yes, sir.

Q. What did you say to him, and what did he say to you at that time, just the substance?

A. It is hard to recall the exact conversation, but I told him that after three years, the way he

(Testimony of George Rollin Goold.)

had performed, that I was satisfied that he knew what he was doing and could handle the work, and my health was getting in pretty bad shape, I was afflicted with arthritis periodically, which entirely incapacitated me, and I told him that I was prepared now to take him in as a partner. And the question then involved was how was he to come, because he had no money. So I told him I thought in all probability the legal angles of the thing could be worked out, and it could be worked out on a delayed purchase, if he was agreeable to it. We would refer the matter to our attorney and see how it could be handled, how he could eventually acquire an interest in the business.

Q. And subsequently did you present him with any type of documents with reference to this acquisition? [133]

A. Subsequently the matter was gone into with counsel, and documents were prepared and presented to him, yes, sir.

Q. I present to you Exhibit 1-A. Was this document, or one of the documents which you presented to your son at the time that the acquisition of the interest in your business was consummated?

A. Dated January—yes, sir, Oh, yes, sir, you are correct, yes. I know the original consideration was \$100,000, and I was looking at the bottom. The original estimated amount was \$100,000.

Q. Now I call your attention to the items set forth in that document, which is entitled, "Bill of

(Testimony of George Rollin Goold.)

Sale," particularly Item A, "Eddy Electric and Mechanical Company."

What did those assets consist of?

A. Just as indicated, the assets of Eddy Electric and Mechanical Company, which in 1943 was still a going merchandising concern located at 309 East Weber Avenue, the assets of that concern were the inventory, the receivables, transportation equipment, tools, office equipment.

Q. I call your attention to Item B. What did the Joint Venture between yourself and A. E. Downer—please state to the Court what those assets consisted of?

A. The joint venture of A. E. Downer, R. Goold and A. E. Downer consisted of a joint venture which was set up in 1941, yes, 1941, for the purpose of doing sewer construction work, and [134] railroad work, particularly sewer work because of the fact that A. E. Downer was a sewer man.

Q. And these assets—

A. (Interposing) The assets consisted of—well, the assets in that instance must have consisted of receivables and tools and equipment.

Q. Yes, sir.

Now I come to the next item, C, an undivided half interest in the Goold-Zinck joint venture.

What did that consist of?

A. The undivided half interest in the Zinck venture,—the Zinck venture was started in '42, Zinck was a general contractor, and he was offered

(Testimony of George Rollin Goold.)

a job with the government to construct a Jap concentration camp at Stockton, and it was a matter of—the government expected the job to run \$500,000, that was the outside figure that was set on it. It was a job that had to be completed in, I think, we were permitted either two or three weeks to do the job.

Q. How many units, dwelling units?

A. I couldn't answer definitely. If my memory serves me properly, it was some 40-odd buildings, separate buildings for concentration purposes. And Zinck went to C. E. Kennedy and told him that he had been offered this job, but he couldn't finance it, it would probably take \$100,000 to finance the job. He said to Kennedy, "Can you arrange to finance the job? The [135] government is willing to deliver me the job if it can be financed and bonded."

Kennedy communicated with me, and also communicated with McIntosh to find out if we were interested in entering into a joint venture with Zinck for that purpose. We agreed to enter into a joint venture agreement, under which on this particular piece of work Zinck was to receive 30 per cent, Zinck was to have the complete charge of the operation of the job, we were to furnish the finances, and I was to have complete charge of the office and the disbursements, and the accounting.

Would you like further explanation of that job?

Mr. Smallpage: No, not unless the Court does.

The Court: No.

(Testimony of George Rollin Goold.)

Q. (By Mr. Smallpage): In other words—may I ask a leading question to save time?

The Court: Well, not over objection of counsel.

Mr. Marcussen: I don't know what it is yet, if your Honor please.

Mr. Smallpage: All right, I was just trying to hasten the time.

Q. (By Mr. Smallpage): This item of \$10,-115.09, does that represent the book accounts and the value of that interest which you had in the statement at that time? [136]

A. That Item C, I believe now that we find that that was in error, that the——

Mr. Marcussen (Interposing): Object to that, if your Honor please, and move that it be stricken on the ground that it is not responsive to the question.

Mr. Smallpage: Submit it.

The Court: What was the answer?

(The answer was read by the Reporter, as follows:

“Answer: That Item C, I believe now that we find that that was in error, that the——”)

The Court: Objection overruled. Motion denied.

Go ahead. Do you have any other questions?

Q. (By Mr. Smallpage): What was the error?

A. The error was, I think, that the net worth of the whole F. R. Zinck operation at that period—this was on January the 2nd of '43 that Jap

(Testimony of George Rollin Goold.)

camp job was completed, both jobs, the Jap camp job and the supplemental job, we did two jobs for the government, that had been completed, and these figures were gotten from Mr. Gatzert who was then our accountant, and evidently he must have overlooked the fact that what I wanted when I asked for this figure was my interest in the joint venture. Apparently instead of that, he has got the entire interest in the joint venture. In other words, I have sold to Everett Goold something here which doesn't represent the true [137] value, it is in excess of the true value, this portion of the sale.

Q. I present to you this document,—which I ask to be marked next in line for identification.

The Clerk: Exhibit 26 marked for identification only.

(The balance sheet referred to was marked as Petitioner's Exhibit No. 26, for identification.)

Q. (By Mr. Smallpage): I present to you a document marked Petitioner's Exhibit 26 for identification, which purports to be the balance sheet of this particular joint venture as of December 31, '42, as corrected. Is that a true and correct statement of the balance of that account as of that date?

A. From my own knowledge I couldn't say. This is a matter of record. All the F. R. Zinck

(Testimony of George Rollin Goold.)

books are in our organization in perfect condition, and subject to investigation, and——

The Court (Interposing): Well, are those figures taken from the books?

The Witness: These figures here?

The Court: Do they reflect the books, do you know?

The Witness: Must reflect the books, your Honor, yes, sir.

Q. (By Mr. Smallpage): Well, they were taken by your accountant, the CPA, [138] is that right?

A. That is right, yes, they were taken off by Mr.——

Q. Snell? A. Mr. Snell.

Mr. Marcussen: May I ask a question on voir dire here, if your Honor please, to determine whether there should be an objection?

The Court: Go ahead.

Voir Dire Examination

By Mr. Marcussen:

Q. I think you testified this ten thousand dollar figure was with respect to the Jap concentration camp job, is that correct?

A. After the completion of the job, concentration job, a second or a third job was started for the government down at the Stockton Ordnance Base, which was the construction of an underground drainage system.

Q. Yes.

A. And I am not sure in my mind for the

(Testimony of George Rollin Goold.)

moment whether that job was started in '42 or in '43. I think that the job was started in '42 because at that time I was spending quite a bit of time at Marysville.

Q. But I think you said the Jap concentration job was done by January 1, '43, when this agreement with your son, Bill of Sale to your son was drawn up, is that correct? [139]

A. Will you state that again, please?

Q. Didn't you just testify that the job, the concentration camp job, had been done at the time that you executed the Bill of Sale here?

A. I believe I did, yes, I think that is right.

Q. Yes. And that the ten thousand dollar figure, you thought that the accountant erred in presenting you a figure for ten thousand dollars which represented the entire interest in it, instead of just your interest?

A. That is correct.

Q. In the Japanese concentration camp?

A. That is correct.

Mr. Marcussen: I object to the Exhibit that has been introduced because it shows it is the drainage job and not the Jap concentration job, no foundation laid, proper foundation laid for the introduction of that exhibit, on the further ground that he cannot authenticate it or verify it.

Mr. Smallpage: Well, the second ground of objection, I take it would be good until we bring in the accountant, your Honor.

The Court: All right, go ahead.

(Testimony of George Rollin Goold.)

Mr. Smallpage: I don't want to jeopardize my record.

Q. (By Mr. Smallpage): Now I call your attention to Item E and F, Items E and F upon that Bill of Sale, which have to do with the Marysville [140] and the Wold joint account, together figured at \$65,000.

What were the assets of those two items?

A. The assets of those two items at this particular time were unobtainable. They were unobtainable for the reason that this Wold operation was in the process of completion and closing. That job started off at something over three million dollars, and by the end of the year there had been between five and six million dollars worth of work done, a great deal of which had been done on the nod of the head, why we use that term is that the government said, "Let's proceed with the job and work out a price on it later." And these figures were the nearest to accurate that were obtainable at that time for the reason that definite figures weren't available.

Q. Now, were the books kept in your office?

A. No, sir.

Q. Where were they kept?

A. They were kept on the job at Camp Beale.

Mr. Smallpage: May I have Exhibit 20, please?

(The Clerk handed the document to counsel.)

Q. (By Mr. Smallpage): I call your attention to Exhibit 20-T, which purports to show the net

(Testimony of George Rollin Goold.)

income or profit from this particular partnership, in the amount of \$44,810.04.

You are familiar, are you, with that?

A. Those figures, I believe, were prepared by Mr. Snell. [141]

Which figure particularly are you asking about?

Q. I am interested particularly in the figure of \$44,810.04.

A. To my knowledge, I can't say that is the correct figure, but the books will reflect exactly what the figure was. My recollection is it was somewhere between forty and forty-five thousand dollars, which was the 1942 settlement. That job extended into 1943, and a complete settlement was not had until '43.

Q. Yes. Well, when that statement came down, Exhibit 20-T, did you then request me, as your counsel, to make an adjustment upon the Bill of Sale for the difference in valuation between \$65,000 and the aforesaid sum of \$44,810.04, an adjustment upon the note, I meant to say?

A. You were instructed to adjust the note to the books as soon as the information was available as to what the value of the operation was.

Q. I call your attention to Exhibit 3-C, and the item therein set forth which reads as follows:

“Credit by error made in computation of value of interest sold. Change per authority of Smallpage to \$29,259 in the matter of endorsement.”

You recall that?

(Testimony of George Rollin Goold.)

A. I recall that there was an adjustment as to the actual value of the contract after it was ascertained.

Q. Yes, sir. Calling your attention again to that item, [142] Exhibit 2-B, was that note——

A. (Interposing). Is this 2-B?

Q. Yes, sir. The front side is 2-B, and the reverse side is 3-C.

Was that note, that is, the original of which that is a photostatic copy, signed by your son at the time of the acquisition of his interest in your partnership? A. Yes, sir.

Q. Do you recall any conversation with your counsel with respect to the terms of that promissory note?

A. I don't recall the exact wording of the conversations that were had at that time. The intent of the note was that it be so drawn that it could be met out of the profits of the business which would accrue to E. R. Goold as a partner.

Q. Mr. Goold, did you at any time have any conversation with your son, or with your counsel, or with anyone else, the substance of which was that you intended to give——

Mr. Marcussen: (Interposing): Object to the question on the ground that it is leading, if your Honor please. He can testify as to what the conversations were.

The Court: Objection sustained.

Q. (By Mr. Smallpage): At the time that that

(Testimony of George Rollin Goold.)

note was executed, did you have a conversation with your son with respect to the terms of the note? [143] A. Yes.

Q. What did you say to him, and what did he say to you?

A. Well, the conditions that are set forth in the note were discussed and recited, as to how he was going to be able to pay for his interest in the business.

Q. Did you have any conversation with him with respect to a gift of your property?

A. A gift?

Q. Yes. A. No, sir.

Q. Did you at any time ever agree to give him a gift of an interest in the partnership?

A. No, sir.

Q. What is the name of your wife?

A. Katharine J. Goold.

Q. Katharine J. Goold? A. Yes, sir.

Mr. Smallpage: For continuity, your Honor, it is stipulated that this property was community property.

Q. (By Mr. Smallpage): Did your wife at any time give her consent, either orally or written, that you would give away one-half interest in that partnership property as evidenced by the Bill of Sale, Exhibit No. 1-A, to your son?

A. Did she, you say—would you repeat that question, [144] please?

Q. Did your wife at any time, either orally or

(Testimony of George Rollin Goold.)

later on, it is in the process of being rectified, but it was a very expensive venture.

Q. When you say "quite serious," what is the extent of the loss to date?

A. The underwriters——

Q. (Interposing): In dollars and cents what is the sum of the loss to date?

Mr. Marcussen: Object, your Honor. The loss has not been established with respect to the year. This is simply qualifying him, laying a foundation for this exhibit. It has nothing to do with the exhibit.

The Court: Well, I think it is an explanation. I overrule the objection.

Mr. Smallpage: Did you hear the question?

The Witness: Will you repeat the question?

Q. (By Mr. Smallpage): I said in dollars and cents, what is the loss to date?

A. We put up \$24,000. [147]

The Court: Just approximately.

Q. (By Mr. Smallpage): Just give me the figures.

A. \$24,000 in cash was put up by the——

Q. (Interposing): Well, how much is the loss on Goold and Son, please?

A. At the present time?

Q. Yes.

A. About four thousand, as near as I can recall, for the moment.

Q. All right. Now I call your attention again

(Testimony of George Rollin Goold.)

to this Exhibit 27 for identification, particularly that portion referring to the two Zinck accounts, one being the drainage system and the other for the construction of the Japanese Assembly Center.

A. Yes, sir.

Q. You will note that those two, that the aggregate of those two figures is different from the Item C set forth in the Bill of Sale, Exhibit 1-A. Does this represent the exact amount of your interest in that joint venture, based upon a percentage basis? A. I would believe——

Mr. Marcussen (Interposing): If your Honor please, I object to it on the ground that this document has not been offered in evidence, and I would like to have it offered because [148] I have an objection to it, and he is testifying now as to the substance of it.

The Court: All right. Objection sustained on this line of questioning.

Mr. Smallpage: Very well. That was the purpose of preparing a foundation.

We offer now this document in connection with the testimony of this witness in evidence.

Mr. Marcussen: If your Honor please, Respondent objects on the ground that the material contained in the upper half is already in evidence, and has been stipulated to, and that this witness is not competent to identify this as a correct statement from the books, and it has been brought out here, for example, particularly with respect to one item,

(Testimony of George Rollin Goold.)

that it shows the statement of \$3,009.76 as a proprietary interest in the Zinck contract, and it has not been shown as of what date that was. It is stated here as of 1942; at the top is his net worth, and he stated on his previous testimony that the figure was not ascertained until 1943.

The Court: Objection overruled. Admitted in evidence.

The Clerk: Exhibit 27.

(The Financial Statement referred to, heretofore marked as Petitioner's Exhibit No. 27, for identification, was received in evidence as Petitioner's Exhibit No. 27.)

Mr. Smallpage: Cross-examination. [149]

Cross-Examination

By Mr. Marcussen:

Q. I am handing you the same Exhibit 27, Mr. Goold, and ask you to state whether you know that that is a correct statement taken from the books of R. Goold and Son?

A. I do not know whether it is a correct statement. It must have been taken from the books because there would have been no other source, and those books are in my office and available at all times.

Q. Well, but you don't know that it was, do you?

A. I don't know the exactness of any of these figures, because I am not an accountant.

Q. Yes. And calling your attention to the sec-

(Testimony of George Rollin Goold.)

ond item under "other assets," that three thousand dollar figure which we have been discussing, you don't know whether or not the books as of December 31, 1942, shows the value of that Zinck interest at \$3,000, do you?

A. I just stated I don't know any of these figures, because I hire accountants to keep these figures, sir.

Q. Yes.

A. That is what we employ accountants for, and what we have Certified Public Accountants for. As to the dollars and cents value of the things, I cannot testify because I am not an accountant.

Q. I hand you Exhibit 1-A here, and call your attention [150] to Item C, that is the Bill of Sale, call your attention to Item C in the amount of \$10,000.

Does that cover the same item as the second item under "other assets" under Exhibit 27?

A. I believe I previously testified that this is, in my opinion, an error, and subsequently discovered to be an error. This did not represent my exact interest. It was corrected subsequently. I am assuming that the correction showed these figures, but I didn't work them out myself, sir.

Q. You don't know of your own knowledge, do you, that this ten thousand dollar figure actually is the value that was placed upon the entire operation as distinguished from your interest?

A. I do not know, because I did not keep the

(Testimony of George Rollin Goold.)

books. The books are a matter of record. They have been thoroughly examined by the Internal Revenue Department, and those things are not in my head. They are all a matter of record, sir.

Q. Yes. Now, then, I would like to ask you about the various joint ventures that are listed on the Bill of Sale.

I think you testified to the fact that this value of \$32,560.83 for Eddy Electric Company was the value of the entire net worth in the business?

A. That, I believe, is reflected from the books as the complete value of that Eddy Electric and Mechanical Company.

Q. Yes. [151]

A. I believe it is, because I have confidence in the people who prepared it. It was not prepared by me.

Q. Yes. And with respect to Item B, which pertains to the Downer joint venture, who financed that joint venture?

A. R. Goold started the financing of that joint venture, as an individual, in 1941.

Q. And what were the circumstances under which you undertook to finance that?

A. The circumstances under which we undertook to finance it were these: I came in contact with Mr. Downer in 1941. At the time we were interested with Tom Buck in the construction of the airfield at Stockton Air Port, and he was the sewer man running work for a Mr. Pistano who had a

(Testimony of George Rollin Goold.)

subcontract from Buck. He called my attention to the fact that there was a job being offered for bids at the Stockton Ordnance Base, a job which would probably run between fifty and seventy-five thousand dollars, and that he would like to leave his present connection and participate. He was working for a salary, I believe, with Pistano, I believe, at the time, that he would like to leave his present job and join with me in attempting to get the contract for the construction of this sewer work. Downer had no money, I had very good credit, and the job was bid on and taken in the name of R. Goold in 1941, but, as a matter of fact, was a joint venture of R. Goold and A. E. Downer, financed by R. Goold on money borrowed from the First National [152] Bank of Stockton. I can't tell you the exact amount, but it seems to me that they had to have probably ten or fifteen thousand dollars, and I made arrangements with my bankers to get whatever money was necessary to finance the job, should we be the successful bidders.

Q. Yes.

A. We subsequently bid on the job, and I carried the bid to San Francisco, it was the only bid offered by any contractor because it was a tough job, and everybody was afraid of it, we were awarded the job. That was the start of the Goold and Downer venture, if that is the answer to your question, sir.

Q. And you signed the note, did you?

(Testimony of George Rollin Goold.)

A. I signed the note, yes, sir.

Q. Did Mr. Downer sign it?

Mr. Smallpage: To which we object upon the ground that the documents themselves are the best evidence.

The Court: Overruled.

A. I couldn't answer whether Downer signed jointly on that note or not.

Q. (By Mr. Marcussen): At any rate, it is clear——

A. (Interposing): We can produce the note, though, however.

Q. It is clear that Downer couldn't get the money and couldn't finance it?

A. Very clear, yes, sir. [153]

Q. And what particular contract was that that you had in mind?

A. Well, that was—let's see now. That was what we called, on a sewer job. I wish I had that list of the 1942 work.

Q. I hand you Exhibit 4-D, and ask you whether that would refresh your recollection, and whether that is it?

A. Yes, that must be the joint venture agreement between—yes. Now, this must have been after the procuring of the job. That was about the right figure. Before we proceeded with the job, this agreement must have been entered into, and evidently was the original, which must be available.

Q. Yes. A. Was signed by both parties.

(Testimony of George Rollin Goold.)

Q. That is the agreement?

A. That is the agreement. Not the financing, I couldn't testify as to who signed that note.

Q. With respect to this particular contract, Mr. Goold, who had charge of doing the actual physical work?

A. On this particular piece of work?

Q. Yes.

A. Downer himself handled this particular piece of work.

Q. Yes.

A. In conjunction with my son, who was then becoming active in the construction business. He and Downer together were [154] on the job.

Q. Yes. And then you were to receive fifty per cent of the profits for financing it, and also——

A. (Interposing): For financing.

Q. For supplying the services of your son, E. R. Goold?

A. The accounting, I was to receive fifty per cent of the profits for the partnership activity. The job was to be accounted in our office, all moneys were to be handled by me, all checks were to be signed by me, and no purchases made without my permission, previous knowledge.

Q. Well, those figures——

The Court (Interposing): That is in evidence, isn't it, the contract?

Mr. Marcussen: Yes, I think it is, your Honor.

The Court: All right.

(Testimony of George Rollin Goold.)

Q. (By Mr. Marcussen): Now, what was the purpose of those arrangements, to protect you on your note that you had given to the bank?

A. Yes, to be very sure that—as a matter of fact, I can enlarge on that a little more, if I might, counsel, or judge, your Honor.

The Court: No.

Q. (By Mr. Marcussen): Then I hand you Exhibit 5-E, which purports to be an additional agreement entered into between you and Mr. Downer on March 1, 1942. [155]

A. Yes. Well, that, I believe, is correct. I had really forgotten about this having been prepared, but this again, I am sure, was a matter of record, and it was for the reason that the first operation was successful, I was satisfied with the way Downer performed on the job, and we continued to take on other work.

Q. And with respect to that other work that was acquired and done pursuant to this continuation of your original agreement, was the financing and the work performed again in the same manner as it was on this original contract?

A. Only the fact that this led into railroad work, which Downer knew nothing about, but still Downer was taken in as a partner on the railroad work. The railroad work was run entirely by my son.

Q. Yes.

A. Who was familiar with railroad work, and Downer was not.

(Testimony of George Rollin Goold.)

Q. Yes.

A. This R. Goold and A. E. Downer operation, as you have probably considered in the records, run into considerable money. A large percentage of it was railroad work with which Downer was not familiar.

Q. Roughly, what was the other type of work? Was it so-called underground work that Mr. Downer had done? [156]

A. Sewers and water.

Q. Yes.

A. And for your information, I had previously done a great deal of that work myself.

Q. Yes. Now, what was the proportion of the work that was railroad work, and what proportion was underground work?

A. I wouldn't want to state that. I just made the statement a moment ago that—I believe I would have to refer to the records to verify this, but I believe that the greater amount of work was railroad work, because of the fact we had one project which ran into figures of one hundred and ninety thousand dollars, if I recall that correctly.

Q. Yes.

A. I think there was 15 or 16 jobs going at that time. Somebody else was accounting for it. It is pretty hard for me to recall the exact figures.

Mr. Smallpage: With counsel and the Court's permission I show you these documents which have a recapitulation of—

The Witness (Interposing): These are work

(Testimony of George Rollin Goold.)

sheets of Gatzert. Goold and Downer at the end of 1943—this summarizes the work, apparently, that was done by Goold and Downer during the year 1943.

This is a railroad job (indicating), this was underground, this is an underground job, this was some underground railroad, and this was railroad, this was underground, this was [157] underground (indicating).

Mr. Marcussen: Well, I don't think there is any point in——

The Witness (Interposing): If you will give me time, I will run those up and tell you what proportion was railroad and what proportion was sewer work, if that is important.

Mr. Smallpage: We will let that go for the moment and take it up with counsel, if counsel wants to do that.

The Witness: Yes.

Q. (By Mr. Marcussen): Now, with respect to Item C on the Bill of Sale, the Zinck operation——

A. (Interposing): We have already covered that, haven't we?

Q. Yes. You financed that also, didn't you?

A. I did not. I assisted in financing.

Q. You and who else, Mr. McIntosh and Mr. Kennedy?

A. Mr. Kennedy did not assist in the financing of that operation. That operation was financed entirely by Mr. McIntosh and myself.

Q. And what did Mr. Kennedy do?

(Testimony of George Rollin Goold.)

A. Mr. Kennedy participated in the management of the job, watched the operation and the proceedings, watched the interest, financial interest of McIntosh and Kennedy, and was given a small percentage of the profit. I think in that particular work [158]—which job are we talking about now?

Q. The Zinck job?

A. The Zinck? Well, that is the Jap camp in '41, if that is what we are dealing with.

Q. About 40 per cent, wasn't it?

A. That was completed. This is January 1st of '43. To continue to answer about that financing, now, I can tell you the proportion of the interest in that first piece of work.

Q. All right. Now, the first piece of work, which was that, the Jap or the drainage job?

A. No, that was the construction of the Jap camp.

Q. The Jap camp. What were the interests in that job?

A. There was the original and the supplemental Jap camp job. I had a 30 per cent interest, McIntosh had 30 per cent, Zinck had 30 per cent, Kennedy had 10 per cent, making a hundred per cent in the two Jap camp operations in 1941.

Q. Yes. And that is included in this Item C?

A. I will have to tell you again that I can't say because I think that that figure is erroneous.

Q. You don't know whether it is included, then, in the \$10,000?

(Testimony of George Rollin Goold.)

A. Did you say included or concluded?

Q. Included.

A. It is my belief at the moment that the settlement was made on the two Jap camp jobs, and that the drainage job [159] had been started, but I would have to refer to the records to be sure of that.

Q. Yes. And you received your 30 per cent interest in those Jap camp jobs for financing the work, is that correct? You and Mr McIntosh, is that correct?

A. Financing and accounting. I handled the office matters.

Q. You handled the records again because you were financing it, is that correct?

A. That is correct.

Q. And Mr. Zinck actually performed the physical work?

A. Mr. Zinck was in charge of the operation.

Q. And did Mr. Kennedy provide bond?

A. Did he? No, we provided the bond.

Q. You provided the bond, but he got his 10 per cent, or whatever it was, for looking after Mr. Zinck and supervising it to a certain extent?

A. That is right, yes.

Q. Now, with respect to the drainage job, what about the Zinck drainage job, is that included in this Item C?

A. I can't tell you, I will say again, but I will tell you about the drainage job in great detail, if

(Testimony of George Rollin Goold.)

you wish it. The drainage job came subsequent to the Jap camp jobs, and it was not a very large piece of work, as I recall, some fifty or sixty thousand dollars, and Zinck had done very well in his other [160] undertakings, and done a good job of performing, and on that job, at the start of the drainage job, the operation was performed on a basis that gave Zinck 50 per cent of the operation, McIntosh 20 per cent, and myself 20 per cent, and Kennedy still retained 10 per cent. That was on the drainage job, operation of the Zinck drainage job, and some subsequent small amount of work was done by Zinck on that basis, that was the basis on which the Zinck operation was closed in 1945, I believe, after the work was completed.

Q. Very well, Mr. Goold.

Now I want to hand you Exhibit 7-G here, and ask you whether that covers the drainage job?

A. Twelfth day of June, 1942——

The Reporter: Speak a little louder, please.

Mr. Marcussen: Withdraw it.

The Witness: I was just reading from a document which is here in evidence as to what it was.

Mr. Marcussen: Withdraw the question.

Q. (By Mr. Marcussen): I think this shows that your percentage of the profit on that job was to be 20 per cent, is that correct?

A. I imagine if we run through here we will find some place where that pro rata was set up, yes. This does not show the distribution of the

(Testimony of George Rollin Goold.)

second 50 per cent, this provides that 50 per cent shall be paid to F. R. Zinck and the remaining 50 per cent, [161] and should any loss arise out of this work, said loss shall be borne in proportion to it, and profits on an equal basis, and that the other 50 per cent was to be divided between Kennedy, McIntosh and Goold on a basis to be agreed upon amongst themselves. And I enlarged on that a moment ago and said this agreement, as far as McIntosh, Kennedy and myself were concerned, was on the basis of 20 per cent to McIntosh, 20 per cent to Goold and 10 per cent to Kennedy, 50 per cent to Zinck.

Q. Yes. And that again was for financing, your 20 per cent, is that correct, under that contract?

A. Financing and managing it. Incidentally, for your information, the F. R. Zinck books were kept in my office. They are still in my office. In fact, the accounting was done——

Q. (Interposing): Yes, I am not interested in that right now, unless you think it is necessary to answer the question.

A. I want to give you all the information I can, sir, when I have the opportunity.

Q. When was that job finished?

A. Offhand I can't answer whether it was finished in '42 or '43.

Q. But it was finished in '42 or '43?

A. I couldn't answer without referring to the records.

(Testimony of George Rollin Goold.)

Q. I see. Did you, after the completion of that job, continue in a joint venture with those same parties under an oral understanding with them that you would handle the additional [162] jobs through the succeeding years on the same basis that this job was handled?

A. There was some minor amount of work that was continued to be handled on that basis, until it got to the point where it was so small it was not worth dividing at that time, so we dissolved this joint venture. I think our records will show a letter of dissolution of the joint venture which was signed by all parties that participated.

Q. Just try to answer my questions, Mr. Goold, if you can.

A. All right, sir, I will try to, but I——

Q. (Interposing): Now, this E and F Item on the Bill of Sale, I call your attention to that, that they total \$65,000 there, and ask you what was your share in that joint venture?

A. My personal share, you mean the share of R. Goold as an individual? Was one-ninth of the percentage of the job.

Q. Yes. And is it true that you and Mr. McIntosh and Mr. Kennedy between you had one-third of that entire job?

A. That is correct, yes, sir.

Q. And you received your one-third, collectively for financing that job?

A. Assisting in the financing.

(Testimony of George Rollin Goold.)

Q. Assisting in the financing?

A. Generally, that note at the Bank of America was signed by about 12 people, if I am not mistaken. [163]

Q. When did you first come into that job, do you recall?

A. The joint venture agreement, it must be in evidence, it has been taken from my records, and it is here. I can't tell you offhand.

Q. Well, had it been under way at the time you came in? Just answer this question: Was it under way at the time you, McIntosh and Kennedy came into the picture for additional financing?

A. Oh, no.

Q. You were with it from the beginning?

A. Yes, we were with it from the time the job was started.

Q. Very well. Now, I think you testified, sir, to conversations that you had with your son prior to January 2nd, 1943, when you told him that you were prepared to take him into partnership with you. And before you mentioned that to your son, you testified, I think—strike that, please.

You testified also that you had conversations with your counsel. Now, which came first, Mr. Goold, the conversations that you had with counsel, or those that you had with your son? I am referring now to the time that you identified as shortly before January 2, 1943, when the Bill of Sale was executed.

A. Definitely, I couldn't answer. The whole

(Testimony of George Rollin Goold.)

thing was in process of formation, discussion between my son and I, and the [164] plan to be worked out by which he could acquire an interest in the business, and it was discussed with the attorney.

Q. It had been discussed with the attorney?

A. I say and it was discussed, I presume approximately about the same time. I think it was all cumulative.

Q. Now, when you went to your attorney, what did you say to Mr. Smallpage you wanted to do about this arrangement?

A. It is pretty hard to tell you what I said in exact words at that time.

Q. I don't ask for exact words, but the substance of it?

A. The substance of it was, as the evidence shows, I believe, that I wanted to sell my son a half interest in the business. He had no money.

Q. Now let me ask you this: Do you recall whether or not you told Mr. Smallpage that you wanted to sell him a one-half interest?

A. Do I recall if I told Mr. Smallpage?

Q. Yes. A. Yes, sir.

Q. Or did you ask Mr. Smallpage any questions as to what was the best way of handling this matter?

A. Yes, I asked him the best way to handle it, in view of the fact that the man had no money.

Q. Yes, well, did he tell you, advise you as to

(Testimony of George Rollin Goold.)

whether or not it would be better to handle this by sale or gift? [165]

A. No, sir, "gift" was not discussed.

Q. It was not discussed at all at any time with Mr. Smallpage?

A. There was no intention of gifts.

Q. Then did Mr. Smallpage draft this Exhibit 1-A which is the Bill of Sale, or did you?

A. Mr. Smallpage drafted it.

Q. Did you supply him with the information as to the value of these various items that are listed there?

A. I am inclined to think that I supplied him with some of the information. Some of the information he must have gotten directly from our accounting department.

Q. I see.

A. That is the best of my memory on the matter.

Q. But at any rate you don't know anything about this ten thousand dollar item, do you, this Item C here?

A. I know considerably about the fact that there has been some error there, and I previously so testified.

Q. All right. I think you testified that, or did you tell your son about the doubtful items here, E and F, that there might have to be some adjustment to those accounts for re-negotiation, downward adjustments for re-negotiation?

A. My son's attention was probably called to the

(Testimony of George Rollin Goold.)

fact that these unknown amounts would have to be taken on what we term as goose eggs, in other words, the final figures on the [166] thing would have to be subsequently ascertained.

Q. And was it anticipated at that time that there would be a reduction in those amounts, that there would have to be a reduction?

A. We were unable to tell what the outcome of the job—we didn't know whether the job—we weren't positive the job would be a profit or loss. Apparently the job had progressed far enough so there was a profit, but the exact profit, there was no way to ascertain, that is exactly accurate.

Q. Now I want to call your attention to Exhibit 2-B, which is a copy of the Note, and I call your attention to paragraphs 2 and 3, which I wish you would read. Don't read it out loud, just read it, please, and familiarize yourself with it.

A. (Examining document.) What was the question again, please, now?

Q. Have you read it? A. Yes, sir.

Q. Now, did you say anything to Mr. Smallpage about including that in the note?

A. I wouldn't recall, I couldn't recall if there was discussion on that matter between Mr. Smallpage and myself or not.

Q. Well, it has to do here now with default. Did Mr. Smallpage put that in, or did you put it in?

(Testimony of George Rollin Goold.)

A. I didn't prepare the note. Mr. Smallpage prepared the [167] note.

Q. Mr. Smallpage prepared the note?

A. Yes, sir.

Q. And who was it that determined the method of repayment to be 25 per cent of the actual profits?

A. Mr. Smallpage determined that, I believe, because I don't remember that that was—that was probably arrived at after some discussion, but my memory does not serve me as to exactly how that was worked out.

Q. Now, then I call your attention to Exhibit 3, which is a copy of the reverse side of that note, containing the endorsements, and I call your attention to the original endorsement here of \$50,000, which is explained under date of December 31, 1943, as "Credit by error made in computation of value of interest sold," and ask you what you know about that fifty thousand dollar figure?

A. I don't know anything about the fifty thousand dollar figure. That endorsement was all in the hands of our attorney.

Q. Yes, and it is stipulated that that is in his handwriting too in this case.

A. I believe that that is right. I will say this, that it isn't in my handwriting, it isn't in my son's.

Q. Yes. Now, you don't have any explanation to offer for that \$50,000 appearing there?

A. None whatsoever, no. [168]

Q. This was a piece of property of yours, a one

(Testimony of George Rollin Goold.)

hundred thousand dollar note from your son, and there is an endorsement showing a payment of \$50,000 on it, and you know nothing about it, is that correct?

Mr. Smallpage: To which we object upon the ground that is not a proper statement.

Mr. Marcussen: I am asking him if that is correct.

Mr. Smallpage: Well, the note speaks for itself.

The Court: Objection overruled.

The Witness: What was the question?

(The pending question was read by the Reporter, as follows:

“Question: This was a piece of property of yours, a one hundred thousand dollar note from your son, and there is an endorsement showing a payment of \$50,000 on it, and you know nothing about it, is that correct?”)

Mr. Smallpage: To which we object. It is not a statement of fact, if your Honor please.

The Court: Objection overruled.

A. I knew that there was some adjustment made on this account, and I knew that it was anticipated there would have to be an adjustment because of the fact that the face of the agreement carries a lot of goose egg computations there, that matter, when the books were finally gotten into shape so that it could be—— [169]

Q. (By Mr. Marcussen) (Interposing): By goose eggs do you mean round figures?

(Testimony of George Rollin Goold.)

A. Yes. Excuse my slang on that.

Q. Well, you don't know how the \$50,000 was arrived at?

A. No, I don't know.

Q. Did you have any conversation with Mr. Smallpage about that?

A. I don't recall that, no, sir.

Q. You don't?

A. No, sir.

Q. And that is crossed off, I call your attention to that fact.

A. I noticed it.

Q. Then underneath it says, "Changed per authority of Smallpage, 1/17/47," 1947, and it is reduced to \$29,259.

Now, what do you know about that item?

A. Well, that item is an adjustment of the exact value of the books at the time, I take it that that is the exact value, the computation of the exact value of this note after adjustment.

Q. For these items here?

A. Yes.

Q. And I hand you Exhibit 20-T, which contains the detail on it, and I think you testified on your direct examination that the correct amount of that figure turned out to be [170] after renegotiation, \$44,810.04?

A. I believe that this is correct. This is taken from our records.

Q. Yes, and the twenty-nine thousand dollar figure, I think you testified, was to adjust for the difference between this \$44,810.04 and the total of \$65,000 there, is that correct?

(Testimony of George Rollin Goold.)

A. That is correct, it is to correct a hundred thousand dollar valuation.

Q. Yes. I want to call your attention to the fact that the difference between that \$65,000 item and the \$44,810.04 is actually \$20,189.96.

A. Yes, sir.

Q. Now, how do you account for that discrepancy? A. I can't account for it, sir.

Q. You can't account for it?

A. No, sir, I know nothing about that.

Q. Now, in making this sale to your son, did you have any conversations with your attorney as to whether or not this note should bear interest? Who determined that?

A. There must have been conversations or it wouldn't have been written up that way. I can't recall the conversations.

Q. You can't recall telling your attorney about it?

A. I can't recall the conversations, no, sir.

Q. But you were satisfied to take his note without interest on it? [171]

A. That is right, yes, sir.

Q. And now, then I call your attention to the first item on the endorsement of Exhibit 3 here, which is under date of December 25, 1943, under the designation, "gift," and it is \$3,000.

Did you talk to your attorney about that?

A. Yes, sir.

Q. And also about this item of 12/25/1944 and

(Testimony of George Rollin Goold.)

12/25/1945, the first of which is in the amount of \$3,000 and the second \$7,000 by gift. Did you talk to your attorney about those items?

A. Yes, sir.

Q. And I call your attention to the fact that the profits—this note was to be repaid out of profits from time to time?

A. That is correct.

Q. And I call your attention to the fact that the only endorsement on here on this note is under date of January 25, 1947, and it refers to earnings for 1945, and the endorsement is in the amount of \$7,107.42.

A. Yes, sir.

Q. I ask you why weren't there other endorsements for the profits that were made throughout these years?

A. I would like to explain that. In '43, they were forgiveness years, if I am not mistaken, between '42 and '43 there was a choice between '42 and '43 on the matter of forgiveness, the method of payment of taxes had been entirely [172] changed. The earnings for 1945—you are asking about why this endorsement is on here?

Q. Why is it only in that amount and why weren't there endorsements for the other earnings of the business, the son's share?

A. Because the condition of the business was so confused during that time that we didn't know exactly what his earnings were. The Internal Revenue Department had attacked the validity of the partnership, they had attacked the sale, and Mr. Smallpage and Mr. Scott were in continuous con-

(Testimony of George Rollin Goold.)

sultation with the government relative to this matter, and on the advice of Mr. Smallpage, he advised that we should do nothing with the note until such time as those matters were straightened out.

Q. Yes. And has any other payment ever been made since that time?

A. There is a subsequent payment for the year of '46, as I recall.

Q. I think in the amount of \$3,040?

A. Some two or three months later, there was a payment made for '46 on the advice of counsel.

Q. Now, what years did that cover, what profits were those?

A. Well, I would have to see the answer. It was for '46, I presume.

Q. Now, I think the evidence that has been introduced [173] here will show that your son even for the year 1943 had a share in the profits of \$60,000, and the evidence will also show substantial earnings for the succeeding years, '44, '45, '46 and '47, and I ask you whether you have any explanation as to why, since the conclusion now of all these income tax matters relative to the recognition of the partnership, why wasn't his share of the earnings endorsed on that, and why wasn't his share devoted to paying his obligation on this note?

A. Frankly, I didn't think there was a conclusion of the Internal Revenue matter. I thought that is what brought us here at the present time.

Q. The partnership is recognized, you understand that, don't you?

(Testimony of George Rollin Goold.)

A. No, I have no assurance that the partnership is recognized. I understood that the partnership was being attacked in this proceedings.

Q. Well, if you were told that the partnership is not being attacked in these proceedings, and that your attorney knows that, and that he knew it was not being attacked from the beginning, way back in 1945, now, do you have any other explanation that you want to make as to why your son's share of the earnings were not applied in the payment of this note in accordance with the terms of the note?

A. Just a matter of confusion.

Mr. Smallpage: To which we object upon the ground [174] that counsel has made a misstatement of fact, your Honor.

The Court: Objection overruled.

Mr. Smallpage: Well, may we—

The Court (Interposing): The objection is overruled. The witness may answer.

Mr. Marcussen: Can you answer?

The Witness: Will you repeat the question, please?

(The pending question was read by the Reporter, as follows:

“Question: Well, if you were told that the partnership is not being attacked in these proceedings, and that your attorney knows that, and that he knew it was not being attacked from the beginning, way back in 1945, now, do you have any other explanation that you want

(Testimony of George Rollin Gould.)

to make as to why your son's share of the earnings were not applied in the payment of this note in accordance with the terms of the note?")

Mr. Smallpage: I respectfully suggest, your Honor, that that is assuming a fact not in evidence. The partnership was continuously under attack until August the 8th, 1946, when it was recognized.

The Court: Objection overruled. He is asked to assume certain facts.

If you assume the facts stated by counsel for the Respondent, what is your answer? Have you got any other reason why your son didn't make any payments on these notes? [175]

The Witness: No.

The Court: This note? That is the only reason you have, that there was trouble with the Bureau of Internal Revenue, is that right?

The Witness: That is correct, yes, sir.

Q. (By Mr. Marcussen): Now, was it your purpose in making this purported sale to your son to have him pay merely for one-half the value of these assets transferred?

A. That is the terms of the note, I believe, sir, yes.

Q. Well, I call your attention to the fact that in the Bill of Sale——

A. (Interposing.) The terms are in the Bill of Sale.

(Testimony of George Rollin Goold.)

Q. —the total of the assets transferred is \$161,000 some odd, and that he signs a note for \$100,000.

A. Well, I have no explanation on that as to why that amount was set up at \$100,000, except for the fact these items down here were unknown at that particular time.

Q. They turned out actually to be less, but even on the figures that you have got on the Exhibit 1, the total of the assets in which you are conveying to him one-half interest totaled \$161,000, and you have him sign a note for \$100,000. Do you have any explanation to offer for that?

A. The note was prepared by counsel. Just what the particular reasons for it were I couldn't tell you. [176]

Q. Did counsel determine the amount of the note?

A. No, counsel determined the amount of the note, the amount of the note——

Q. (Interposing.) Was \$100,000. Now, who decided upon that \$100,000?

A. I believe that it was counsel who decided to set the note up at \$100,000, and make subsequent adjustments if it became necessary as to what the figures should be.

Q. And now, at the time that you received this note and had your son sign it, did you ever expect to receive any payments from him on it?

A. I certainly did.

Q. Full payment? A. Yes, sir.

(Testimony of George Rollin Goold.)

Q. After adjustments were made for any errors?

A. That is right.

Q. And valuation of certain items included on the Bill of Sale?

A. At the time this note was prepared it was my expectation that he would pay the note in accordance with the terms of the note.

Q. Yet you never insisted that any of the profits be devoted to it, even after the income matter was cleared up?

Mr. Smallpage: Objected to, stating a fact not in evidence. The income tax matter was not straightened up. [177]

The Court: That part of the question will go out. The answer is that he never insisted on his son paying any part of the note.

Q. (By Mr. Marcussen): Now, do you ever recall talking to Mr. McCubbin about this case, who was an Internal Revenue Agent who came out to see you?

A. Some slight conversation. Mr. McCubbin spent considerable time in our office.

Q. Do you ever recall that he questioned you about the amount of the costs of the interest included on the Bill of Sale, and their fair market value, and do you ever recall telling him that you never expected to be paid anything on that note?

Mr. Smallpage: One minute. To which we object on the ground the proper foundation has not been laid, the time, place and people present, and the conversation at least substantially given.

(Testimony of George Rollin Goold.)

The Court: Objection overruled.

Do you recall that?

Q. (By Mr. Marcussen): On your oath?

The Court: Do you recall saying that?

A. The answer is "no," I don't recall.

The Court: The answer is "no."

Q. (By Mr. Marcussen): [178] Do you recall stating to Mr. McCubbin that this matter had been in the hands of your attorney, and that he had prepared the matter, and that you knew nothing about income taxes, and that, in answer to his questions, you didn't want to fall into any trap?

A. I don't recall any such conversation about falling into any trap, no, sir.

Q. You don't recall? A. No, sir.

Mr. Marcussen: That is all, your Honor.

Mr. Smallpage: Will you stipulate that that is a true and correct copy of the original letter from the Conferee's office respecting this matter, from the Internal Revenue Department?

What time does your train leave, your Honor?

The Court: That is all right, we will go right ahead.

Mr. Smallpage: I have only taken 25 minutes.

The Court: That is all right, don't be alarmed.

Mr. Marcussen: (Examining document.) No objection.

Mr. Smallpage: We offer this in evidence.

The Court: It will be admitted in evidence.

Mr. Smallpage: And ask it be marked next in order. For continuity, I want to say, your Honor,

(Testimony of George Rollin Goold.)

it is a letter of compromise from the Department with respect to recognizing the partnership, providing that we do certain things, and the date [179] of it is August, 1946.

The Clerk: Exhibit 28.

(The letter referred to was marked and received in evidence as Petitioner's Exhibit No. 28.)

PETITIONER'S EXHIBIT No. 28

Treasury Department
Internal Revenue Service
San Francisco 5, Calif.
August 20, 1946

Office of
Internal Revenue Agent in Charge
San Francisco Division
74 New Montgomery Street

In Replying Refer to IRA:Conf-ALW

Mr. LaFayette J. Smallpage
Room 511, Savings and Loan Bank Building
Stockton, California

In re: R. Goold and Son
R. Goold
E. R. Goold
Stockton, California

Year: 1943

Dear Mr. Smallpage:

In further reference to the protests filed by you with respect to the above-named taxpayers for the

(Testimony of George Rollin Goold.)

year 1943, the following adjustments are suggested as a basis for settlement. In case you are willing to close the cases on this basis, the result will be subject to approval by the reviewing authorities in this office and in the Bureau.

(a) To recognize the partnership between R. Goold and E. R. Goold.

(b) To consider the transfer of an undivided one-half interest in the partnership assets as a gift to the son instead of a sale as claimed; gift tax to be adjusted and determined later.

(c) To consider that the son's interest in the partnership is his separate property, and that his distributive share of the partnership profits is taxable in full to him except one-half of a reasonable salary for his services of \$5,000.00, or \$2,500.00, which amount will be taxed to his wife, as her one-half share of the community income.

(d) Since the deduction of \$2,211.00 claimed for Mr. R. Goold's expenses in connection with the Marysville job was incurred over a period of 67 weeks running from March 23, 1942 to September 1943, and since there are no records to verify such expenditures, a deduction will be allowed of \$500.00 to cover cost of meals and lodging at Marysville for estimated 35 trips made in 1943 and for automobile expense. Mr. Goold used an automobile which belonged to the electrical appliance business and it is assumed that most of the expenses of this car were

(Testimony of George Rollin Goold.)

included in automobile expenses claimed and allowed to that business.

(e) If the above-stated adjustments are acceptable to the taxpayers, the personal exemption and credit for dependents will be allowed in full to E. R. Goold since this adjustment will be to the mutual tax advantage of E. R. Goold and his wife.

Please advise this office at the earliest available time as to whether the settlement as set forth above is acceptable to the taxpayers in question. Another hearing in this office for further discussion of the issues and the basis of settlement will be granted upon written request.

Very truly yours,

/s/ A. L. WILKINSON,

Conferee Revenue Agent.

ALW:eh

cc to Mr. R. Goold and

Mr. E. R. Goold

Mr. Smallpage: It will be considered as read in evidence?

The Court: That is right.

Mr. Smallpage: That is, the significant portion.

The Court: I don't have to get away from here until three o'clock, I just want counsel to know.

Mr. Smallpage: I am hurrying my examination along a little, but I took account of my time. I have exactly 25 minutes.

(Testimony of George Rollin Goold.)

I ask that this document be marked Petitioner's Exhibit for identification next in number.

The Clerk: Marked for identification only Exhibit 29.

(The document referred to was marked as Petitioner's Exhibit No. 29, for identification.)

Redirect Examination

By Mr. Smallpage:

Q. I present this document to you, which has been taken out of my file, respecting this matter, which is entitled, "Assets conveyed to Everett R. Goold, January 1, 1943, which becomes the assets of partnership R. Goold and Son."

I ask you if that document was given—— [180]

Mr. Marcussen (Interposing): Object to the question on the grounds it is leading, and ask counsel, if your Honor please, to ask the witness what that document is.

The Court: All right, what is it, Mr. Witness?

Mr. Smallpage: Wait a minute, may I——

The Court: All right, reform your question.

Mr. Smallpage: I just gave the title.

Q. (By Mr. Smallpage): Was that document delivered by you to me?

Mr. Marcussen: Object to that on the ground it is a leading question.

The Court: Objection sustained.

Mr. Smallpage: A leading question to ask him if he gave it to me?

The Court: That is right.

(Testimony of George Rollin Goold.)

Mr. Smallpage: Do we take exceptions?

The Court: Exception noted. The witness can be asked to describe that letter, or that document, what it is, and what he did with it, if he knows. This is direct examination, redirect examination.

Q. (By Mr. Smallpage): Well, is that document in your handwriting?

A. The document is in my handwriting, yes, sir.

Q. All right. What did you do with it?

A. This was a document that was turned over to you at the [181] time that we were preparing to sell this partnership interest, half of it, to sell this partnership interest on January the 1st, 1943, and in my writing down here I have subscribed "the above is the interest of R. Goold on the above day, and are the assets of the partnership. All of the above is community property of R. Goold and Katharine Goold, his wife."

Q. I call your particular attention to the words, "estimated."

A. Opposite two of the accounts here I have written the words "estimated" because of the fact we weren't able to determine the value at that time.

Mr. Smallpage: We ask that this be admitted in evidence.

The Witness: The books didn't disclose that.

The Court: Admitted.

The Clerk: Exhibit 29.

(The document referred to, heretofore

(Testimony of George Rollin Goold.)

marked as Petitioner's Exhibit No. 29 for identification, was received in evidence as Petitioner's Exhibit No. 29.)

Q. (By Mr. Smallpage): Now, during 1943, Mr. Goold, in the fall of 1943, did you receive a request from the War Department, Price Adjustment Board, for renegotiation, dated September 22, 1943, demanding that you submit for renegotiation all contracts which you, either as an individual, or as a partnership of yourself [182] and your son, had with the government during the years 1941, '42 and '43?

A. We were called on by the government to submit renegotiations during the year '43. The exact date I couldn't recall. Some time, I believe, about the middle of the year.

Q. All right, and did not that renegotiation continue throughout the entire year of 1944 up to the fall?

A. It was a long time in process. We prepared a complete report of all of the government operations and submitted them for approval. It is my recollection it was something like a year before it came back.

Q. Now, was that a reason, in addition to that given by you on cross-examination, why——

Mr. Marcussen (Interposing): Object to the question on the grounds that it is leading.

The Court: Objection sustained.

Mr. Smallpage: All right.

(Testimony of George Rollin Goold.)

Q. (By Mr. Smallpage): During the year 1944, what was the condition of the company with respect to moneys necessary to carry on its business?

A. We were carrying on considerable work, and we were not taking any money out of the business because of the fact there was a lot of war work in progress, and a lot more to come along. At the time we had the Wold—the liability on the Wold job, [183] my borrowing capacity was about exhausted. The result was that we needed all the capital we could get to carry on operations with the pay rolls.

Q. Did either one or both of these two factors, to-wit, the pendency——

Mr. Marcussen (Interposing): Object to the question on the ground that it is leading.

The Court: Let counsel get a little bit further along in the question. Go ahead.

Mr. Smallpage: I will repeat the question.

Q. (By Mr. Smallpage): Did either one of these two factors, the pendency of the renegotiation proceedings during the year 1943 and '44, and the shortage of money for operating capital in your business influence you in the question of requiring a payment upon this note from your son?

A. Quite materially. We wanted to keep just as liquid as possible, and because of those factors we didn't have a definite knowledge of the amount of money which was to be paid on the note, because of the percentage of profits. There were too many

(Testimony of George Rollin Goold.)

your own operations and continue the arrangement you had made regardless of income tax consequences, if that is what you wanted to do?

A. We expected to continue the operation, there was no [186] idea of cessation of the operation, we expected to continue the operation, but the accounting of the operation was something, and is still something that was in the balance, as I understand.

Q. Regardless of the income tax outcome, you continued to have your son in partnership with you?

A. It was my plan and still is my plan to have him in partnership.

Q. And to continue on with your agreement, is that the idea, that he would pay for his interest?

A. Not if this whole thing is set aside.

Q. Why not?

A. If the whole thing is set aside, we would have to start in all over again and work out a plan by which he can acquire an interest.

Q. Did your counsel ever tell you that the disposition of your income tax liability for any of these years would require that this transaction with your son be set aside? Did you ever receive advice to that effect?

A. I believe I did, yes. If I didn't, I probably figured it out myself, if the whole transaction was set aside, that——

The Court: At any rate, that is your reason, isn't it?

The Witness: Yes, sir.

(Testimony of George Rollin Goold.)

The Court: All right.

Q. (By Mr. Marcussen): [187] And it was Mr. Smallpage that advised you to that effect, is that correct?

Mr. Smallpage: Just a minute!

A. Advised me to the effect——?

Q. (By Mr. Marcussen): That this would all have to be set aside?

A. I couldn't say definitely whether Mr. Smallpage said that or not.

Q. Do you have any other attorney that advised you?

Mr. Smallpage: Just a minute! To which we object.

The Court: The witness said either his attorney advised him, or he thought it up himself. That was his testimony.

The Witness: Yes.

Mr. Smallpage: I would like to have an explanation from counsel what he means by "all set aside."

Mr. Marcussen: I think I have identified it in the record.

Q. (By Mr. Marcussen): I mean this transaction that has been entered into between you and your son?

The Court: I think the witness himself used the phrase "set aside." Go ahead.

The Witness: And the question is addressed to me now?

Mr. Marcussen: No, no question. Just a moment.

Q. (By Mr. Marcussen): [188] Do you recall

(Testimony of George Rollin Goold.)

whether your attorney advised you that if this were held to be a partnership, rather, if the government would not recognize the partnership, that it would be to your advantage to undo this transaction if you could? Did he ever tell you that?

A. I didn't have to have anybody tell me because I had the figures in front of me, when the government sent in the request, the demand for revision of the income tax returns on the basis that I was to contribute, and take back the entire ownership, and contribute some sixteen or seventeen thousand dollars, and at the same time my son receiving notice that he was to be refunded some twenty-three or twenty-four thousand dollars because of the fact the partnership had been set aside.

Q. And was it your understanding that——

A. (Interposing): I think those letters are in our file.

Q. Was it your understanding that the government was actually attempting to set aside the partnership and dissolve the partnership?

A. I don't think there was any question of it, it was so set forth in the letter. I would believe that was the only basis on which they would recount the matter.

Q. During the year 1945 was your credit with the bank still good? A. 1945? [189]

Q. Yes.

A. My credit has been good at the bank at all times as far as I know for any amount that the banks were able to loan.

(Testimony of George Rollin Goold.)

Q. And you have always been able to borrow substantial amounts, have you, from the bank?

A. Unless I was overdrawn, unless, I mean, I was up to my borrowing limit. On several occasions—for your information about bank loans, on one occasion my banker, at that time the Stockton First National Bank, had a loan limit of \$50,000. At the time that this Goold and Downer operation was set up—this occurs to me now—I could borrow no more money from them, and I was taken by the hand and led down to the bank on the corner, and my banker recommended to the other bank (and I was not a customer), that they lend me an additional sum of money which was required to finance the Goold and Downer operations.

Q. Your credit has always been good, and it is good now?

A. As long as it has not been exhausted.

Q. It is good for substantial amounts at the bank right now?

A. At the present time.

Q. How much could you go to the bank right now and borrow?

A. I don't know. I have never tried.

Q. What is the largest amount you tried to borrow?

Mr. Smallpage: Objected to as immaterial.

The Court: What is the materiality, aside from the [190] testimony of the man that his credit has been good?

(Testimony of George Rollin Goold.)

Mr. Marcussen: I will withdraw the question, if your Honor please.

The Court: Yes.

Q. (By Mr. Marcussen): Now, after the profits for all of these years from these operations were ascertained you knew they had been substantial, didn't you, for 1943, '44, '45 and '46?

A. The profits were substantial, yes, sir.

Q. Yes, sir. A. From the operation.

Q. And that your son's half would be substantial?

A. I didn't know whether the son had a half or not.

Q. Well, if he did, why, the half would be substantial, wouldn't it?

A. If it was a substantial earning, if he had half, it would be substantial, that is right, yes.

Q. And you followed your attorney's advice all along here in this original transaction and sale to your son, and I think you have testified here in substance that you followed his advice all the way through. Did you ever depart from his advice in any particular on this transaction?

A. For the moment I can't recall any particular instance.

Q. Yes.

A. This attorney has been my attorney all during these [191] operations.

Q. Yes. This note that your son gave you, in whose possession was that note? A. Mine.

(Testimony of George Rollin Goold.)

Q. All during these years? A. Yes.

Q. How come that your attorney and your accountant have been making endorsements on it? Didn't they keep it in their office?

A. I don't believe it was ever out of my office, except possibly for those purposes of endorsement that occurred, or something.

Q. And did you surrender it to them, or did they come and ask you for it?

A. I can't answer that, I don't know.

Q. Now, did you ever consider the possibility——

A. (Interposing): I would like to answer that by saying that my papers have been taken out of my office by so many different people, accountants, the Tax Bureau and attorneys, that at the present moment I haven't any idea where half of them are. As far as the note is concerned, I don't believe that the note was ever out of my possession except for purposes of endorsement that were done by counsel.

Q. Yes. After the profits were ascertained, did you ever give any consideration to permitting your son to pay this [192] by having him merely assign to you his share of the profits in the business?

Mr. Smallpage: To which we object, unless counsel specifies the year.

The Court: Well, is this omitted cross-examination? This is the second set of cross-examination I have permitted you to——

Mr. Marcussen (Interposing): He has gone into the matter, the matter was gone into on redirect,

(Testimony of George Rollin Goold.)

if your Honor please, as to why he didn't make payments.

The Court: Well, on matters that were covered by redirect that were at all new, I take it you can go into, but I didn't know this was——

Mr. Marcussen (Interposing): Very well, I will withdraw the question, your Honor.

No further questions.

Mr. Smallpage: That is all, Mr. Goold.

The Court: That is all.

Mr. Smallpage: Just one question, Mr. Goold.

May I have permission? I overlooked it entirely, your Honor.

Redirect Examination

By Mr. Smallpage:

Q. In your opinion, assuming that your son was not a partner interested with you in the business but was purely a [193] salaried employee, during the year 1943 what do you consider his services were worth?

A. Well, for similar services, superintendents and managers are paid anywhere from ten to fifteen thousand dollars a year for operations of this magnitude.

Mr. Smallpage: That is all.

The Court: Cross-examine?

Mr. Marcussen: No further cross-examination.

(Witness excused.)

Mr. Smallpage: That is all. Petitioner rests.

The Court: No further testimony?

Mr. Smallpage: No.

The Court: Call your first witness.

Mr. Smallpage: Will Mr. Goold remain, or can he remain?

Mr. Marcussen: That is all right.

If your Honor please, I would like to offer next in order as Respondent's Exhibit next in order, the 1942 Joint Income Tax Return of Everett R. and Elizabeth F. Goold.

The Court: Admitted in evidence.

The Clerk: Exhibit Y.

(The Income Tax Return referred to was marked and received in evidence as Respondent's Exhibit Y.)

Mr. Marcussen: And is it stipulated that Everett R. is the father of the Petitioner, and Elizabeth is the mother? [194]

Mr. Smallpage: No, that is the Petitioner and wife.

Mr. Marcussen: Oh, I beg your pardon, that it is the Petitioner. Thank you for the correction.

BRUCE McCUBBIN

called as a witness for an on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name and address.

The Court: Your name is McCubbin, you are

(Testimony of Bruce McCubbin.)

an Internal Revenue Agent, is that correct, in the Stockton District?

The Witness: Yes.

The Court: Go ahead.

Q. (By Mr. Marcussen): In the course of the exercise of your duties, did you have occasion to investigate the income tax liability of Mr. Rolly Goold? A. I did.

Q. And in the course of that investigation, did you have talks with him about his liability from time to time? A. I did.

Q. And when did you first undertake this investigation?

A. As I remember, the investigation of the various joint ventures in which he was interested in was commenced about [195] either January or February, 1945, very early in the year.

Q. And is that the time that you began also to investigate Rolly Goold's income tax liability for the year 1943? A. That is right.

Q. And do you recall approximately when it was in the course of your investigation that you had a conference with, or a conversation with Mr. Rolly Goold?

A. I had various conversations with Mr. Goold from the first day I commenced the investigation until the investigation was finally completed.

Q. Did you have any conversation with him about the items on Exhibit 1, which is the Bill of Sale?

(Testimony of Bruce McCubbin.)

Mr. Smallpage: To which we object upon the ground that the question is leading.

The Court: Ask him whether he had any conversations.

Q. (By Mr. Marcussen): Did you?

The Court: Did you have any conversations?

A. I did.

Q. (By Mr. Marcussen): I hand you Exhibit 1-A, and ask you whether those are the items you had a conversation with him about.

Mr. Smallpage: To which we object upon the ground that is leading.

The Court: Sustained. [196]

Mr. Smallpage: And I ask that the document be taken from the witness' inspection.

Mr. Marcussen: I don't see why he can't see an exhibit that has been offered in evidence. I am merely identifying the conversation, that is all.

The Court: Now, Mr. McCubbin, state whether or not you and Rolly Goold ever had a conversation with regard to the Exhibit which is before you.

The Witness: We did.

Mr. Marcussen: Yes.

The Court: Now, what was that conversation?

Mr. Smallpage: To which we object upon the ground the proper foundation has not been laid, the time, place, the people present.

The Court: I will withdraw the question because it is improper for me to participate.

Mr. Marcussen: I will restate the question.

(Testimony of Bruce McCubbin.)

Q. (By Mr. Marcussen): Will you state what conversation you had with him about those items, please?

Mr. Smallpage: To which we object upon the ground the proper foundation has not been laid, two grounds, first, the people present, time and place, and for the further ground that this question is obviously for the purpose of discrediting Mr. Rolly Goold. [197]

The Court: Objection overruled. You may answer, Mr. McCubbin.

A. As I remember, I asked Mr. Good how these items were arrived at, and how their values were determined. To my best recollection, he stated that at that time they were estimated, they were the closest figures obtainable at that time.

Does that answer the question?

Q. (By Mr. Marcussen): Did you have any conversation with Mr. Goold at all about the note that his son had given him to pay for those items?

A. I did.

Q. What conversation did you have with him about that?

Mr. Smallpage: May it be understood that my objection as to the time, place and people present is interposed to that question?

The Court: The same ruling. Go ahead.

A. I asked Mr. Goold if his son had ever made any payments on account of this note. He stated, "no," he had not, he didn't expect him to make any payments on the note.

(Testimony of Bruce McCubbin.)

Mr. Marcussen: Will you speak up a little bit?

The Witness: I asked Mr. Goold if his son had ever made any payments on this note, Mr. Goold stated, "no," he had not, that he didn't expect his son to make any direct payments because the note provided for payments of 25 per cent of the [198] anticipated profits in these various joint ventures which would be applied against the note.

Mr. Smallpage: Would you give me your Reporter's notation where that answer came, please?

The Reporter: Page 50.

Q. (By Mr. Marcussen): Did he say anything else?

A. I asked him—I don't remember exactly the questions that I asked him, but I do know that Mr. Goold——

Mr. Smallpage (Interposing): Just a minute! To which we object upon the statement of the witness that he doesn't remember the questions, that he——

The Court (Interposing): Objection overruled. State what you know, Mr. McCubbin.

The Witness: I do know that——

Mr. Smallpage (Interposing): May I take an exception to that, please?

The Court: Exception noted.

The Witness: I do know that Mr. Goold made the same statement to me that he has made here, that he couldn't rely on all the figures, and the records were there, he let the records speak for

(Testimony of Bruce McCubbin.)

themselves, and he hesitated to answer a direct question in a definite manner for the reason that he was not familiar with income tax law and procedure, and he might get himself in a trap as far as his tax liability was concerned. [199]

The Court: With regard to the last part of that answer, how is it material, Mr. Marcussen?

Mr. Marcussen: The materiality, if your Honor please, is that it shows that the Petitioner is relying completely on counsel, it shows a knowledge on his part, that something is attempted to be done here, and he doesn't want to be led into any traps. Now, I think a statement of that kind is exceedingly material.

The Court: Go ahead. Any other questions?

Q. (By Mr. Marcussen): Now, did he say anything further about payments on the note, that you can recall?

A. I don't remember any further statements made by him, or any other questions asked by me in regard to this matter.

Mr. Smallpage: May I see the report, please?

Mr. Marcussen: No, I am not going to put it all in.

Mr. Smallpage: Well, you will put——

Mr. Marcussen: Well, let's not argue about it. Will you please read it?

Mr. Smallpage (Examining document).

Mr. Marcussen: Excuse me, your Honor, for raising my voice.

(Testimony of Bruce McCubbin.)

Q. (By Mr. Marcussen): Now, I call your attention here to two paragraphs in this report, which is a report of a technical advisor, the [200] paragraphs being on pages 6 and 7, and ask you just to read that over, this first paragraph.

The Court: Is this shown to the witness to refresh his memory?

Mr. Marcussen: Yes, your Honor.

Mr. Smallpage: And it is being shown to impeach his own witness.

The Court: Go ahead, Mr. McCubbin.

Mr. Marcussen: Just read it, don't read it out loud, just read it, this first part of the first paragraph on page 6.

Q. (By Mr. Marcussen): Now, does that refresh your recollection about anything that Mr. Goold told you about the prospects of payment on that note?

Mr. Smallpage: To which we except.

The Court: All right, state your objection.

Mr. Smallpage: To which we object upon the ground that the document shown to the witness is a typewritten document, it doesn't purport to be signed by the witness, is an obvious attempt to impeach the witness without the proper foundation being laid.

The Court: Objection overruled.

This document was given to you, Mr. McCubbin, for the purpose of refreshing your recollection. You are asked now to testify not to what this docu-

(Testimony of Bruce McCubbin.)

ment says, but upon the recollection [201] that you have yourself independently of this document, which it refreshes in your mind, if it does.

Mr. Marcussen: That is correct.

The Court: Now, do you have such a recollection refreshed by this document?

Mr. Smallpage: May I examine the document, your Honor, to ascertain whether or not this witness signed that document, or prepared it, or was it prepared by somebody else?

Mr. Marcussen: I will identify the document further, if you wish.

The Court: Counsel can examine it, yes, I should think.

Mr. Smallpage: In other words, if I understand the law correctly—if not your Honor will correct me—I believe that a witness can only look at such document as he himself prepared for the purpose of refreshing his recollection, or one that was prepared under his direction. I asked counsel to let me look at the rest of the report——

Mr. Marcussen (Interposing): I will withdraw the question at this time, if your Honor please.

The Court: The question is withdrawn.

Mr. Marcussen: And ask leave to terminate the examination of the witness at this time, and to put on another witness that will identify this document.

The Court: Well, do you want to continue with the [202] direct examination of this witness on other matters?

(Testimony of Bruce McCubbin.)

Mr. Marcussen: No, your Honor.

The Court: Are you through with him?

Mr. Marcussen: I am through with him.

The Court: Cross-examine.

Mr. Smallpage: No questions.

Mr. Marcussen: All right. Step down.

The Court: That is all, Mr. McCubbin.

(Witness excused.)

Mr. Marcussen: Mr. Wilker.

Whereupon,

WILLIAM G. WILKER

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name and address.

The Witness: William G. Wilker.

Q. (By Mr. Marcussen): What is your occupation, Mr. Wilker?

A. Conferee of the Technical Staff.

Q. Of the Bureau of Internal Revenue?

A. Of the Bureau of Internal Revenue.

Q. And will you state briefly what are your duties as a Conferee on the Technical Staff?

A. We invite taxpayers to conferences for the purpose of [203] discussing the matters in the case, and arranging a settlement, if possible.

Q. Do you also prepare reports in the course of your duties?

(Testimony of William G. Wilker.)

A. Yes, as a consequence we prepare a report of what we have done.

Q. Yes. Do you recall preparing a report in connection with the liability of the Petitioners in this case for the year 1943? A. I do.

Q. I hand you this file in which is contained——

Mr. Smallpage (Interposing): To which we object upon the grounds of immateriality. If counsel desires to introduce it through the witness, that is proper, but a report cannot be introduced in evidence as such.

Mr. Marcussen: I am not offering this in evidence, I don't propose to.

The Court: Well, I am at a loss to know what the question is leading to, then, Mr. Marcussen, the identification of a document which is not to be introduced in evidence.

Mr. Marcussen: If your Honor please, this is the same document which I handed to the preceding witness, and the document is a document which was made by Mr. Wilker. This document contains a quotation from a document prepared by Mr. McCubbin, and I am simply going to identify it by this witness, [204] that quotation, and then I am going to take it to Mr. McCubbin and ask him whether he recognizes it, have it further identified, and then present it to Mr. McCubbin and ask him whether it refreshes his recollection about a conversation he had, not with the taxpayer, but with the taxpayer's father, Mr. Rolly Goold.

(Testimony of William G. Wilker.)

The Court: Well, you are proving by this witness, then, that a quotation in the document is a quotation from some matter prepared by Mr. McCubbin himself?

Mr. Marcussen: Yes.

The Court: I see. All right, proceed.

Mr. Smallpage: To which we object upon the ground that that calls for a conclusion of the witness, and the original document is the document that should be produced. The petitioner here is placed in a most disadvantageous position when a government witness is permitted to say, who did not have the talk with the taxpayer, that a document which he holds in his hands is a copy of another document. Until they can show the loss of that other document they are not entitled to show a copy of it, that is fundamental law.

The Court: Objection overruled.

Mr. Marcussen: Very well.

The Court: You may answer, Mr. Wilker.

Mr. Smallpage: Exception, please.

The Court: Exception noted.

Mr. Smallpage: And in order that my objection might [205] be made specific, it is because the proper foundation has not been laid in that it has not been shown that the document from which the alleged quotation was taken is missing and cannot be produced for examination.

The Court: Go ahead.

Q. (By Mr. Marcussen): Now I call your at-

(Testimony of William G. Wilker.)

tention to one of the documents contained in this file, and ask you whether the one referred to is a report prepared by you in connection with the liability of this taxpayer for the year 1943?

A. (Examining document): It is.

Q. Is that your signature appearing on page 16 of the report? A. Yes, sir.

Mr. Smallpage: To which we object upon the ground it is immaterial, what his report is concerning the liability of this taxpayer.

The Court: Overruled.

Mr. Smallpage: It is understood, I also assume, that in a conference held with the representative of the government, that the statements made there which involve compromises and cross questions are certainly not to be used against the witness, unless he himself had a transcription in shorthand, or it was by some other recognized means taken down.

The Court: Go ahead. [206]

Mr. Marcussen: Now, if your Honor please——

The Court (Interposing): Let's get the point of this.

Mr. Marcussen: I must make a statement to clarify the record at this point, if your Honor will indulge me.

The Court: I don't think the record needs clarification, because I think the record is clear. The purpose of this is merely to identify as a copy, from something that Mr. McCubbin wrote, two paragraphs in this document which is before this witness.

(Testimony of William G. Wilker.)

Mr. Marcussen: Yes. I also wish the record to show, your Honor, that this is not a statement made by the taxpayer in any attempt to compromise his liability at all.

The Court: All right, go ahead. As I said before, the record doesn't need it because——

Mr. Smallpage (Interposing): Well then, the objection is it is hearsay.

The Court: Go ahead.

Q. (By Mr. Marcussen): I call your attention to page 6 of this document, and I call your attention to the paragraph beginning slightly below the middle of the page, which reads——

Mr. Smallpage (Interposing): Just a minute. Let him read it himself.

Q. (By Mr. Marcussen): [207] I will ask you to read it. A. "The above mentioned——"

Q. (Interposing): No.

The Court: No.

A. "——Revenue Agent's report——"

Q. (By Mr. Marcussen) (Interposing): Just read it silently, Mr. Wilker.

A. Oh, excuse me. I am sorry, I am sorry.

Q. Have you read it? A. Yes.

Mr. Marcussen: Do you want to see it, counsel?

Mr. Smallpage: Yes, certainly, I want to see the whole document.

Q. (By Mr. Marcussen): I ask you to state——

Mr. Smallpage (Interposing): Just a minute! Let me read the whole document.

(Testimony of William G. Wilker.)

Mr. Marcussen: No, the document is not in evidence. The document consists of sixteen pages. It is a confidential document. I am merely establishing a quotation from a particular page, your Honor.

Mr. Smallpage: It would seem to me, your Honor, that if any portion of this document can be shown to the witness it should be shown to the counsel for the Petitioner.

The Court: Go ahead. The only purpose of this, as [208] I see it, is to get two paragraphs identified as from a letter, or a statement, or a document prepared by Mr. McCubbin. That is the only relevancy of this at all.

Mr. Smallpage: Alleged to have been prepared.

The Court: Well, that is all right, alleged to have been. I don't know. Let the witness testify. The rest of the document is irrelevant and immaterial, we are not interested in it.

I don't take it that counsel for the government is interested in it.

Mr. Marcussen: That is right.

The Court: The rest of the document would be totally irrelevant and immaterial, because, as you pointed out, the proceedings before the Conferee, before any settlement proceedings, are as though they were nothing in the proceeding here. We are not interested in any statements made or in any action taken by way of settlement.

Mr. Smallpage: All right. Then is this not fair, your Honor, that before they produce a copy made

(Testimony of William G. Wilker.)

by a third person, why don't they produce the report itself? It must be in the files of the government. I don't think that is an unfair request. Why don't they produce Mr. McCubbin's own report? I have no objection to that.

The Court: Let's go ahead. The point of argument here is with regard to this witness' examination as to those [209] paragraphs.

Now proceed, Mr. Marcussen.

Q. (By Mr. Marcussen): Now I would like to ask you, Mr. Wilker, about these two paragraphs which are in quotation marks, and ask you where you got those two paragraphs that are quoted on pages 6 and 7 of this report.

A. From a report by the Revenue Agent.

Q. And who was the Revenue Agent?

A. Mr. McCubbin.

Q. Yes. And at the time that you inserted these two paragraphs from that Revenue Agent's report in this report, did you have the Revenue Agent's report before you? A. I did.

Q. And it was taken from that? A. Yes.

Q. Do you know where that report is now?

A. No.

Mr. Marcussen: That is all that I have to ask of this witness.

The Court: That is all, unless there is cross examination.

Mr. Smallpage: Yes, I would like to know what became——

(Testimony of William G. Wilker.)

The Court (Interposing): All right.

Cross-Examination

By Mr. Smallpage:

Q. Mr. Witness, how voluminous was that report of Mr. McCubbin's from which he took this extract?

A. Oh, I don't recall.

Q. Well, was it four pages or ten pages?

A. Oh, more likely ten, but I am not certain.

Q. It was a bound volume, or a bound report, was it not?

A. Well, no, not bound, that is, it was a sheaf of papers fastened together, I presume, with a staple or fastener.

Q. It is a part of the government records, in so far as this transaction is concerned?

A. It was when I had it.

Q. And you treated it as such, did you not?

A. Oh, yes.

Q. Now, what did you do with it?

A. I associated it with the file when I transmitted the file to my superiors.

Q. That is to say, it was filed with this document of which this is alleged to be a copy, is that right? A. Pardon me?

Q. It was filed with, or associated with you—by the way, what do you mean by the word "associated" by you?

A. Put into the files, placed with the docket, or with the folder that I had for the case.

Q. And was it stapled at the time? [211]

(Testimony of William G. Wilker.)

A. No.

Q. But it was at least put in there in the same way your report was?

A. Well, it was kept separate, my report was, upon the Petitioner, the partnership report was a separate document, kept separate from that file, that is, it was not bound in a jacket like this.

Q. All right, but you put it in the jacket when you returned it?

A. Oh, yes; oh, yes.

Q. To whom did you return it?

A. It went to my superior.

Q. Who is that?

A. Mr. Lowder and Mr. Harlacher, from there it would go to the file clerks.

Q. Have you made any search to ascertain whether or not that document is not in the files at the present time?

A. No.

Q. Has anyone ever requested of you that you make a search to ascertain?

A. No.

Q. Now, in the preparation of your report, did you dictate that particular paragraph, or did you give Mr. McCubbin's alleged report to a stenographer and tell her to make a transcription? [212]

A. I told her to make a transcription and checked it.

Q. And is that the only portion of his report that is included?

Mr. Marcussen: Object to that, it has no materiality, if your Honor please.

(Testimony of William G. Wilker.)

Q. (By Mr. Smallpage): That is included in this document? A. As a quotation?

Mr. Marcussen: Objection on the ground it is immaterial, your Honor, and going to take time.

The Witness: It is the only part I see quoted.

The Court: All right, any other questions.

Mr. Smallpage: That is all.

The Court: That is all.

Mr. Marcussen: Now, just a moment, Mr. Wilker.

Redirect Examination

By Mr. Marcussen:

Q. You testified that the Revenue Agent's report was returned to the file. Is that the same as this file that is involved in this proceeding?

A. When I said to the files, I meant to our file room in our office room. From there I can imagine that it was returned to the Revenue Agent's office.

Q. I see.

And I think you testified that that was a report of [213] the partnership, the analysis of the partnership income?

A. Yes, yes, this was on the partnership.

Q. Well, in the ordinary course of Bureau procedure, would that document be placed in this file, or would it be returned to the partnership file?

A. It was returned to the partnership file.

Q. Yes. And do you recall whether I asked you to look for that in this file? Have you made a search?

(Testimony of William G. Wilker.)

A. Yes, I have looked in this file.

Q. And did you find it? A. No.

Mr. Marcussen: That is all.

The Court: That is all, sir.

Mr. Smallpage: Just one minute.

Recross-Examination

By Mr. Smallpage:

Q. Mr. Witness, at the time that Mr. Scott and Mr. Goold and his son and myself were in your office, did you at that time have Mr. McCubbin's report before you?

Mr. Marcussen: Object to it on the grounds it is immaterial. We are not concerned about any conferences that took place.

The Court: I don't think it is material.

Mr. Marcussen: In the Technical Staff, that is the whole point. [214]

The Court: I will sustain the objection.

Q. (By Mr. Smallpage): Did you at the time that we had that conference make any statement to us individually or collectively that Mr. Goold had made any statement to Mr. McCubbin with respect to the terms under which he had sold this property to his son?

Mr. Marcussen: Objection on the grounds that it is not proper cross-examination, not within the scope of the direct.

The Court: I will sustain the objection.

Mr. Smallpage: That is all.

The Court: That is all, sir.

(Witness excused.)

Mr. Marcussen: Recall Mr. McCubbin, please.
Whereupon,

BRUCE McCUBBIN,

recalled as a witness for and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Marcussen:

Q. Now, Mr. McCubbin, I want to call your attention to page 6 of this report which has been identified by the preceding witness, and I call your attention to the second last paragraph on the page which appears in quotation marks, and is the first of the two paragraphs which the preceding witness identified, and I ask you——

The Court: (Interposing) You might just ask him whether that refreshes his recollection or not.

Q. (By Mr. Marcussen): Yes, whether that refreshes your recollection as to any conversation that you had with Rolly Goold as to the subject of making payments on the note?

Mr. Smallpage: Just a minute, if your Honor please.

The Court: All right.

Mr. Smallpage: That document should never have been shown to this witness until I have had an

(Testimony of Bruce McCubbin.)

opportunity to object to it. It is an attempt to impeach his own witness without the proper foundation being laid. The phraseology contained in those two paragraphs is at distinct variance with what the witness testified to on direct examination. Now, it is most assuredly unfair to this witness to be presented with a document which he himself does not know is a quotation from a report which was made by him, and in view of the fact that the government has shown no attempt, no effort whatsoever to go over to their file room and get the other document which certainly must be in existence, the original report from which that document that extract was taken is in existence, it is right here. We have produced for the government some, I think, 50 exhibits. We only had three or four. They required and asked us repeatedly up to Saturday to produce different exhibits. Now, certainly [216] they have had the opportunity to go over there and bring that partnership report here, and if they wanted to refresh Mr. McCubbin's mind, they could have had it here to do so, and to rely upon an alleged copy made by a stenographer who was told to copy a paragraph is most unfair to the witness, and does not constitute the proper foundation for an impeachment of their own witness. That is exactly what this is.

The Court: Objection overruled.

Does this refresh your recollection?

The Witness: It does.

(Testimony of Bruce McCubbin.)

Q. (By Mr. Marcussen): Now, can you testify after your recollection is refreshed as to what Mr. Rolly Goold did tell you about payments on the note?

Mr. Smallpage: Just a minute! To which we object upon the ground that the question has been asked and answered in direct conversation.

The Court: Overruled.

A. Well, he stated he had received——

The Court: (Interposing) Now you are testifying from your own recollection?

Mr. Smallpage: Listen, let's remove the document from the witness'——

The Court: (Interposing) You are not testifying from any document, it is just what you remember now from your own [217] recollection of it.

Mr. Smallpage: Let's put it up here.

Mr. Marcussen: Let's leave it here. I have covered the page.

The Witness: As I remember, Mr. Goold stated that he had received no payments on the note, and he didn't expect to receive any direct payments on the note. As I recollect, Mr. Goold stated that he at that time had received no payments on the note, and did not expect to receive any payments on the note.

Q. (By Mr. Marcussen): Now, is there any doubt about it in your mind at all, as to whether he made that statement to you?

A. No, there never was.

(Testimony of Bruce McCubbin.)

Mr. Marcussen: That is all.

Mr. Smallpage: Will you please refer back to the witness' testimony that he gave on direct examination, wherein he stated that Mr. Goold did not expect his son to make payments on the note, but his money on the note was to come out of his son's share of the profits of the business? Please refer to that testimony that the witness gave.

The Court: Was that the part that you asked the Reporter to make a notation on?

Mr. Smallpage: It is right about in there, if your Honor recalls that testimony.

The Court: Well, the testimony will appear when the [218] transcript is made up. You may cross-examine the witness on the assumption that he did make the statement.

Mr. Smallpage: Thank you. I did not want to make cross-examination on an erroneous assumption of fact.

The Court: All right.

Mr. Marcussen: Now, will it be understood that you will state to the witness what you understood his statement was?

Mr. Smallpage: Please refer back to your notes, page 50.

The Court: I don't know if the Reporter can find it. Do you think you can?

(The testimony referred to was read by the Reporter, as follows:)

(Testimony of Bruce McCubbin.)

“Answer: I asked Mr. Goold if his son had ever made any payments on account of this note. He stated, ‘no,’ he had not, he did not expect him to make any payments on the note.”

The Court: All right, that is enough. Your assumption is correct.

Mr. Smallpage: I thought it was.

Cross-Examination

By Mr. Smallpage:

Q. Now, that is a fact what he said, isn't it, Mr. McCubbin, your testimony is true and correct as given in your [219] direct examination and as reported by this young lady?

A. That is correct, but I still believe that both of my statements——

Q. (Interposing) Just a minute!

The Court: Not what you believe, what he said. Now, you said once that he said he didn't expect any direct payments because he was going to get payment out of the profits.

The Witness: That is right.

The Court: All right, it is not what you believe, it is what he said.

The Witness: All right.

Q. (By Mr. Smallpage): Now, Mr. McCubbin, in your report you never made any contention that this transaction between Goold and his son was a gift and not a purchase, did you?

Mr. Marcussen: Object to that on the grounds it is improper cross-examination.

(Testimony of Bruce McCubbin.)

The Court: Sustained.

Mr. Smallpage: All right, I call for the report.

The Court: All right, it does not make any difference what Mr. McCubbin contended with regard to it, we are interested in what the facts are.

Mr. Smallpage: That is right. All right.

The Court: Yes, it is irrelevant.

Mr. Smallpage: The point I want to make is this: [220] That is if he had received any evidence to the effect that this was a gift and not a purchase transaction, he should have so reported it in his return, which he did not, and I submit it is a matter of fact that he made no such return. I am not privileged, as I understand the law, to examine these Internal Revenue Agents' reports. That is correct, is it not, your Honor? [221]

* * *

Mr. Smallpage: May the record show, in response to the petition of the Respondent, Petitioner had ready here for examination as their witnesses, Mr. Snell, CPA, Accountant for the Petitioner, who prepared some of these exhibits, and also Mrs. Katharine Goold, the mother of the petitioner. [225]

* * *

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 17 inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Praecipe for Record" in the proceeding before The Tax Court of the United States entitled "E. R. Goold, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 15072 and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of July, 1949.

[Seal]

VICTOR S. MERSCH,
Clerk, The Tax Court
of the United States.

[Endorsed]: No. 12296. United States Court of Appeals for the Ninth Circuit. E. R. Goold, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 21, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12296

E. R. GOOLD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Now Comes the petitioner, E. R. Goold, by his attorney as undersigned, and states that the points on which he intends to rely as to the relief sought in this proceeding for review of a decision of The Tax Court of the United States are, with reference to the petition for review hereinbefore filed with the said Tax Court, all of the assignments of error

numbered 1 to 4, inclusive, as set forth in section IV of the said petition for review, and the same are so adopted.

The said petitioner designates as material to the consideration of the review subject of this proceeding all those parts of the record described in the petitioner's Praecipe for Record under items 1 to 7, inclusive, of that document, this statement of points and designation of record, and exhibits 1-A, 2-B, 3-C, and 28 filed in the proceeding before The Tax Court of the United States at the hearing thereon March 28 and 29, 1948, all of which items and exhibits are properly to be included in the record to be printed in this proceeding. The petitioner also designates as material to the consideration of this review as part of the record to be printed, as stated above, the following described portions of stenographic transcript of the proceedings of the Division of The Tax Court of the United States held and had in this cause at San Francisco, California, on March 28 and 29, 1948, to-wit:

- (1) The last four (4) lines of page 30;
- (2) Beginning with line 17 on page 32, reading, "By Mr. Smallpage": to and including line 22 on page 47, reading, "A. There was not anything discussed on that.";
- (3) Beginning with line 10 on page 48, reading, "Elizabeth Goold" to and including the last line on page 49;
- (4) Beginning with line 10 on page 50, reading "Cross-Examination" to and including line 22 on page 51, reading, "A. He always has.";

(5) Lines 17 and 18 on page 56, reading "Cross-Examination by Mr. Marcussen:";

(6) Beginning with line 20 on page 58, reading, "Q. All right. Now I want to take you back to the first . . ." to and including line 20 on page 66, reading, "Mr. Marcussen: No, I am not.";

(7) Beginning with line 1 on page 72 to and including line 16 on page 119, reading, "A. I don't know.";

(8) Beginning with line 19 on page 121, reading, "C. E. Kennedy" to and including line 24 on page 121, reading, "Direct Examination.";

(9) Beginning with line 7 on page 124, reading, "By Mr. Smallpage:" to and including line 14 on page 125, reading, "in the partnership.";

(10) Beginning with line 22 on page 129, reading, "George Rollin Goold" to and including line 3 on page 195, reading, "Petitioner. Thank you for the correction.";

(11) Beginning with line 6 on page 195, reading, "Bruce McCubbin" to and including line 7 on page 221, reading, "The Court: Yes, the objection is sustained.";

(12) Beginning with line 14 on page 225, reading, "Mr. Smallpage: May the record show, in response to . . ." to and including line 18 on page 225, reading, "Mrs. Katharine Goold, the mother of the petitioner."

Dated: July 29, 1949.

/s/ LAFAYETTE J. SMALLPAGE,

Attorney for the Petitioner.

[Endorsed]: Filed July 30, 1949.

